

THE REGULATION OF ABORTION IN CONTEMPORARY TURKEY:
LAWS, POLICIES, DISCOURSES

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Thesis Abstract

Ayşegül Toksöz, “The Regulation of Abortion in Contemporary Turkey:
Laws, Policies, Discourses”

In contrast to many places around the world, abortion has not been a major public issue in Turkey. It was legalized in 1983 without serious public pressure or debates, and the legalization has not triggered anti-abortionist reactions. However, this does not mean that all women have had access to safe abortion since then; and in recent years, receiving this service in public institutions has become increasingly difficult. Some attribute this to the AKP (Adalet ve Kalkınma Partisi - Justice and Development Party) government’s ongoing rule since 2002, and to its commonly assumed religious conservatism. In this thesis, relying on a research on abortion regulations and practices in contemporary Turkey, I contend that there is more to this situation than what this immediate causality proposes; and that what is at stake is a rather complex process of articulation between neoliberalism and neoconservatism. Although the discrepancies between abortion laws and actual abortion practices have been extensively studied in various countries at different historical periods, I suggest that focusing on this issue in contemporary Turkey is informative not only for its own sake because it is an understudied area, but also for revealing the insidious ways in which neoliberalism reshapes public health policies, and through them state-citizen relationships, by accentuating already existing inequalities ever more radically. As such, the thesis aims to contextualize women’s changing social status within the political transformations of the first decade of the twenty first century.

Tez Özeti

Ayşegül Toksöz, “Günümüz Türkiye’si’nde Kürtajın Düzenlenmesi:

Yasalar, Siyasalar, Söylemler”

Dünyanın pek çok yerinde olduğunun aksine, kürtaj, Türkiye’de hiçbir zaman önemli bir toplumsal mesele haline gelmemiştir. Ciddi bir kamuoyu tartışması ya da baskısı olmaksızın 1983’te yasallaşmış, yasallaşma da herhangi bir kürtaj karşıtı tepkiye yol açmamıştır. Fakat bu, o zamandan beri tüm kadınların güvenli kürtaj hizmetine ulaşabildiği anlamına gelmemektedir; ve son yıllarda kamu sektöründe bu hizmet giderek ulaşılmaz hale gelmiştir. Kimileri bunu Adalet ve Kalkınma Partisi’nin (AKP) 2002’den beri süren iktidarına, ve partinin varsayılan dini muhafazakarlığına bağlamaktadır. Bu tezde, günümüz Türkiye’si’ndeki kürtaj düzenleme ve pratikleri üzerine yapılmış bir araştırmadan yola çıkarak, bu duruma yol açanın bu dolaysız nedensellikten fazlası olduğunu, ve söz konusu olanın neoliberalizm ile yeni muhafazakarlık arasındaki daha karmaşık bir eklemlenme olduğunu öne sürüyorum. Farklı ülkelerde, farklı tarihsel dönemlerde gözlemlenen kürtaj kanunları ile mevcut kürtaj pratikleri arasındaki uyumsuzluklar kapsamlı şekilde araştırılmış olsa da, günümüz Türkiye’si’ndeki duruma odaklanmanın kendi başına, yalnızca bu konu burada az çalışılmış olduğu için değil, aynı zamanda neoliberalizmin sağlık politikalarını, ve böylece devlet-vatandaş ilişkisini örtük biçimde nasıl yeniden şekillendirdiğini, varolan toplumsal eşitsizlikleri radikal biçimde vurgulu hale getirdiğini görmemize izin verdiği için de bilgilendirici olduğunu savunuyorum. Bu anlamda, tez, kadınların değişen sosyal statüsünü 21. yüzyılın ilk on yılındaki politik dönüşümlere istinaden bağlamsallaştırmayı amaçlamaktadır.

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CHAPTER 1

INTRODUCTION

“I felt so horrible when the doctor talked about the development of the ‘baby’s heart, bones and so on. It is like in a science-fiction movie, as if some kind of monster is growing in me,” she said.

“If you are so unhappy with carrying this on, you know there are solutions to that,” replied the other one.

“How can you speak like that to a pregnant woman?” scolded another. “You cannot talk about abortion in such a mundane manner. She does not need advice, she needs encouragement right now.”

In what follows, a very heated dispute about abortion arose within the feminist group of which I am a member, the Socialist Feminist Collective, which organizes on the basis of an understanding of anti-capitalist, independent feminist movement. What started like an ordinary conversation, a kind of feminist “opening”, turned into an irresolvable disagreement: what one of the parties was looking for was not to convince the others through argumentation, but just to silence the other opinion - since the question at hand should even not be talked about in a normalizing manner.

What was surprising to me was not that some women in our group took on an anti-abortionist stance. In effect, it is not the case that all feminists defend the right to abort: some feminists view abortion as women’s alienation from their own bodies and reproductive capacities, while others assert that the liberalization of abortion encourages men’s sexual irresponsibility at the expense of women’s health. But even these arguments were not sought for in the incident I described; and simple

censorship was being imposed to prevent people from voicing their views. In other words, while anti-abortionism is not so much alien within a feminist group, the style of discussion that was brought about together with it surely was. Indeed, there must be something very particular about the question of abortion.

Following this incident, when the flames died away, we organized a series of discussion sessions, and conducting research on the issue in order to prepare for discussions, I became more and more interested in the topic. While for Turkey, we cannot talk about an organized anti-abortionist movement like the ones in the United States or in some Catholic countries, abortion upon request is getting increasingly inaccessible, especially in public institutions; and it is simultaneously being degraded in the social imaginary.

In this study, by scrutinizing Turkish abortion laws, state's healthcare policies and the discourses on reproduction adopted by the current government's top officials, I attempt to make sense of this situation. I argue that rather than being a home-grown Islamic conservatism, this trend mirrors wider global tendencies, epitomized in the flagrant anti-abortionism in the USA.

First, some remarks on these latter claims.

Increasing Inaccessibility? Degradation in the Social Imaginary?

In contrast to many places around the world, abortion has never been a major public issue in Turkey. It was legalized in 1983 without serious public pressure or debates, and the legalization has not triggered anti-abortion reactions. Prior to that, abortion was nonetheless commonly practised, be it in self-induced forms or in form of illegal operations by experts or non-experts alike (Tezcan et al., 1980). After legalization,

despite some shortcomings due rather to the narrow limits of the concerning articles, and the questionable quality of the services provided in public hospitals, women had more or less easy access to abortion upon request (Huntington et al., 1996), a fact reflected in the decreasing maternal deaths due to unsafe abortions (Bulut, 2001). But this optimistic picture seems to be changing – negatively.

Alongside the striking portrayals of scandalous events in the media,¹ I was stunned the most by one particular article in the daily newspaper *Birgün*. In the article, Sevgim Denizaltı argued that in most of the public hospitals in Istanbul, Turkey's by far the biggest city, abortion was not performed, and in those ones where it was performed, this was only with the condition that the woman seeking abortion was married (Denizaltı, 2009).

This routine denial of a service, which was acknowledged as a legal right to women, outraged me maybe even more than the occasional tragedies that the newspapers narrated in a rather spectacularized manner. Besides, this change seemed to have occurred recently: during our discussion sessions, several women from my feminist group related their past experiences of abortion in public hospitals, which belied the claims in the article.

One easy explanation for this, which was accepted by many people whom I talked with before and during my research, was based on the presumed Islamism of the Justice and Development Party's (*Adalet ve Kalkınma Partisi* - AKP) government. The ruling party since 2002, the AKP is associated with political Islam and religious conservatism; an association which allows the connection between its rule and anti-abortionism to be easily made. But as Leila Hessini (2007, p. 82) notes,

¹ I encountered many news reports conveying the stories of women (often very young women) to whom abortion was denied (often their pregnancies resulted from rape). See, for instance, Demirci, 2009.

“while conservative religious arguments are still being used to legitimise patriarchal practices, [there is] great diversity in Muslim discourses, policies and individual decision-making related to abortion.” However, the AKP members’ endeavour to distance the party’s image from political Islam, an endeavour most crystallized in economic policies and in the process of integration into the European Union, seemed to make a short circuit when it came to the “woman question.”

In Turkey, as elsewhere in the world, women bear the burden of “signifying the nation” (Werner, 2004). Established in 1923, the Republic of Turkey was defined by its break from its Ottoman past and by its identification with “modernity.” An important measure for achieving this end was secularization: religion was associated with backwardness, and was harshly dispelled from politics. Women, in this Republican narrative, constituted the foremost indicator of the nation’s achievement in this process: their look, attire, educational level and public presence have always been major issues in the Turkish politics. Islamic dressing, for instance, was viewed as a scandalous sign of backwardness (Bozdoğan, 2001).

However, the return of the repressed was inevitable. Religion started to find increasing political representation (although this process has been halted several times) from the 1950s onwards, with the passage from single-party rule to multi-party regime and the ensuing Democratic Party (*Demokrat Parti* – DP); a trend that made a jump in the 1990s and culminated in the election victory of the AKP in the general elections of 2002. Their coming to power was met with indignation by the secularists, whose deepest fears centred on women’s condition: was the AKP going to force all women to veil? Was it going to curtail the education programmes targeting young girls? Were women going to be able to work outside of home under the AKP’s rule? Was Turkey going to be Iran?

So far, these secularist fears seem not to have subsided, despite the AKP's fervent refusal of such incriminations; and anything that is perceived as a problem, by the party's opponents, is counted as a sign of its "backwardness."

In the framework of this study, I chose to move away from these kinds of explanations. For one thing, considering the AKP as "backward" seemed to me like a terrible mistake, since this perspective would completely miss the multi-dimensional aspect of its policies. But still, I felt the need to ask whether anti-abortionism in Turkey was on the rise or not, whether the AKP had a role in it or not, whether population politics of the state could account for this or not...

In fact, these questions were not completely unfounded: on the one hand, there were the PM Erdoğan's insistent statements addressing women and requiring that "all Turkish women have at least three children." On the other hand, while conducting a preliminary research for my study, I found out that in the Directorate of the Religious Affairs' journal, a series of articles condemning abortion had been published, that in certain private hospitals, owned by persons known for being close to top government officials, abortion was not performed, in addition to the newspaper articles I mentioned above.

Therefore, what I had in mind was to focus on the discrepancy between the written law (a relatively liberal abortion law) and the actual practice (increasing inaccessibility of abortion upon request), in order to find out whether the apparent anti-abortionism was actually a state policy or not. I planned to study the content of the current abortion laws and other official documents concerning abortion, and to visit a selected number of state hospitals: one where abortion upon request was not performed at all, one where only married women could abort, and one where abortion was accessible within the legal limits.

This projected framework started to fall apart after my first visit to a hospital, one in which abortion upon request was not performed at all: neither some (explicit or implicit) order from the state was at stake, nor the doctors were passionate conservatives. The problem seemed to be one of planning. Although the doctors I spoke with cynically remarked that the AKP deliberately failed in the planning in order to curtail the abortion services, I could not be satisfied with such conspiracy theories.

I encountered so many specificities in the first hospitals I visited that I could not be satisfied with visiting only three hospitals, as originally projected, either. Visiting hospitals did not only help me to contextualize the issue more thoroughly, but they also lead me to spend more time in thinking about the nature and function of the law and of the state. Therefore, my aim in this study is twofold: I do not only intend to document the current situation of abortion in contemporary Turkey, but I also try to understand the changes that are occurring in this field with respect to other social transformations, and the institutional bases of these.

In order to achieve this end, alongside the fieldwork I conducted in ten state hospitals between November 2010 and March 2011, I made several interviews with people who are interested in the topic in some way: Ayşe Akın, a senior gynaecologist who had an active role in the 1983 legalization of abortion; Muhtar Çokar, a retired doctor who currently works in a NGO specialized in reproductive health and who has written a PhD thesis in medical ethics on abortion; Meriç Eyüboğlu, one of the Istanbul Medical Chamber's (*Istanbul Tabip Odası* – ITO). In addition, I attended several activities by the ITO, where I met people and had unofficial communications about abortion with them. In order to have a better understanding of the conditions under which the legalization took place, I retrieved

the proceedings of the parliament meetings held in 1982 from Turkish Parliament's archive, and made a press review of the years from 1980 to 1983. In addition to scrutinizing all the available official documents regulating the provision of abortion, I studied the content of the recent changes in the health care system in Turkey. Finally, in order to understand the current government's stance on abortion, I carried out a press review which includes newspapers, online news web sites, and the AKP's various resources.

In the second chapter, after offering an overview of the history of abortion laws in Turkey, I focus on the passing of the "Law Concerning Population Planning" that legalized abortion upon request with some restrictions in 1983. But my concern is less about understanding how abortion came to be legalized at a relatively early date, and more about figuring out the dynamics of the process which lead the article to gain its specific content. Engaging with the state ethnography literature and critical studies of law, I try to show how various actors (state officials, health and planning experts, politicians...) interact on the contested terrain of the law, and how this process leads to the production of the "state effect."

In the third chapter, focusing on official documents on abortion, I try to make sense of the diversity of practices I encountered during my visits to the hospitals, against the background of the transformations that the health care system in Turkey is currently undergoing. This allows me to observe that, while it is plain that abortion upon request is becoming increasingly inaccessible, one of the salient reasons for this is the neoliberalization of the health care services: it is the predominance of the logic of profit, rather than repression from above.

In the fourth chapter, I try to come to understand why neoliberal health policies lead to this particular outcome, the increasing inaccessibility, instead of

marketability, of abortion. Benefiting from moral regulation studies, I try to delineate how the articulation of neoliberalism and neoconservatism with each other and other existing societal dynamics, give rise to the emergence of an appallingly anti-women social environment. Apart from historicising the AKP's rule, I try to grasp the formation of this social atmosphere by focusing on top government figures' speeches that I gathered in a press review of the last years. My contention is that the valuation of women as mothers, together with their degradation in all other respects, especially with regards to work, is indispensable in the periods of capital accumulation, and that religion serves as a powerful support for this process. This argument echoes Wendy Brown's (2006) work on the articulation between neoliberalism and neoconservatism, whereby she claims that these two political trends effectively reinforce each other not only in their shared referral to the family, but also in that they enhance a violent corrosion of democratic rights. I try to show that this has particular implications for women.

Patriarchal Capitalism and Women's Citizenship

In writing this thesis, I took on a materialist feminist perspective. I do not mean by it that I explicitly adopted a pro-choice stance: as stated earlier, feminists do not necessarily advocate the right to abort, but can be critical of it on various grounds. Although my singling out the fact that women cannot enjoy their legal rights can be read as a pro-choice position, this attitude involves rather an emphasis on the erosion of even formal liberal principles of citizenship, which is only implicitly related to feminism. What I mean by taking on a materialist feminist perspective is, rather, to

take into account the theories of patriarchal capitalism in exploring any dimension of social life.

Feminist critique of Marx's theory of capital targets its gender-blindness, and asserts that men and women are affected by capitalist processes of production and reproduction in distinct ways. Feminist scholars argued that, rather than being a mere residuum of feudalism, the exploitation of women is the very basis upon which capitalism is founded, since the reproduction of the labour-power, which historically has been assigned to women, is central to capitalist relations (Della Costa, 1971; James, 1975). Although capitalism is not *by definition* patriarchal, in other words, although patriarchy is not intrinsic to the logic of surplus production, historically, capitalism has always been patriarchal: women's (naturalised) invisible domestic labour (which (re)produces the most essential capitalist commodity, that is, labour power) is a necessary condition for the accumulation of capital: "...the sphere of reproduction, which is based on women's invisible labour, being the space where 'free' workers are (re)produced, constitutes the *hidden* basis of capitalist relations of production." (Acar Savran, 2008; p. 15).

Along with invisible domestic labour, there is a second, equally -and literally- vital aspect to reproduction, which also particularly pertains to women: procreation. Procreation is handled in Marx's theory as a "natural" phenomenon, and population as responding automatically to the changes in production relations. By contrast, feminists have shown that procreation is always socially produced under particular historical circumstances, and embedded in structural and conjunctural power relations.

Silvia Federici, in her elaborate volume *Caliban and the Witch* (2004), explores the period of "transition to capitalism" by using the Marxian concept of

“primitive accumulation of wealth.” While in Marx’s usage of the term, primitive accumulation “entailed taking land, say, enclosing it, and expelling a resident population to create a landless proletariat, and then releasing the land into the privatized mainstream of capital accumulation” (Harvey, 2005; p. 149), Federici extends it so as to account for the subjugation of women’s (especially proletarian women and women in the colonies) bodies. She suggests that, following the seventeenth century’s global population crisis, European states intervened into the situation by enacting coercive policies over reproduction, which turned the female body into a site to be conquered and exploited. This process entailed not only extreme violence against women, epitomized in the seventeenth and eighteenth centuries witch hunts, but also their gradual social degradation. This resulted, on the one hand, in women being excluded from the sphere of knowledge about the body (in effect, most of the witchcraft accusations involved healing, and especially contraceptive or abortive, practices) and their loss of control over their reproductive capacities. On the other hand, this process cemented women’s exclusion from the newly emerging wage-labour market, confining them within the sphere of the family. In this manner, a new structure of sexual division of labour has been established.²

Caliban and the Witch is illuminating not only because it sheds light on the historical formations of patriarchal capitalism, but also because it provides the insight that similar processes can occur “in every phase of capitalist globalization.”

As a matter of fact, the edited volume by Maria Mies and her colleagues, *Women: The Last Colony* (2008) demonstrates how these capitalist strategies, targeting

² This, of course, does not mean that women did not get involved in commodity production; but the degradation of their social status allowed their labour to be devalued, and more easily appropriated by their male counterparts or by the capitalists.

women's paid (wage) and unpaid (domestic) labour simultaneously, are operative in today's world.

These insights inform my study in several respects. First, using the framework of women's paid and unpaid labour, it draws the parallels between capitalism's crises and the devaluation of female labour on the one hand, women's social degradation and their confinement within the family on the other. Secondly, it calls attention to the violent aspect of these processes. Lastly, it points at the state's role within these processes, especially with regard to the question of population.

With all these in mind, it is clear that I cannot rely on a framework of citizenship *à la* T.H. Marshall, which considers citizenship as a universal, undifferentiated principle of equality (O'Connor, 1993). This way of conceptualizing citizenship has been criticised for overlooking class (Barbalet, 1988), race, ethnicity and nation (Spinner, 1994), along with gender. Carol Pateman's now classic book, *The Sexual Contract* (1988) is considered a watershed in studies of citizenship and gender. Not only did she assert that women were included in the polity through a sexual contract, that is, through their reproductive capacities, as opposed to the "social" contract between men, but she also argued that the citizenship rights enjoyed specifically by women condemned them to second-class citizenship by situating them outside the public, and within the private, realm.

The question of women's citizenship rights has been studied extensively, along with the equality *versus* difference debates among feminists: should women claim equality with men, or should they claim rights with respect to their differences? (Fineman and Sweet Thomadsen, 1991) At another level, the issue of second-class citizenship has been considered especially with regards to the discrepancy between formal citizenship status and actual practices of citizenship

rights. As hinted above, this discrepancy is one of my concerns, but my emphasis is less on it than on the way in which such discrepancies are institutionalized and on the “discursive moves through which the discrepancy between the rule (for example, egalitarian constitutions) and practice are made understandable and acceptable to the subjects of the nation without resorting to an analytic of interest or deceit” (Sirman, 2005; p. 148).

Therefore, I am interested in the way in which citizenship is constituted *differentially* not only *vis-à-vis*, but also through interaction with the state. One of my contentions in this study is that a series of encounters with the state, be they at the level of discourse or everyday practice, play an important role in defining what kind of citizen one is. In addition to that, if citizenship is primarily a question of individuals’ and groups’ relationships with the state, today, the social services system in general, and healthcare system in particular, are the predominant areas within which the encounters between the state and citizens take place, and where the differentiations between various kinds of citizenship are being made.

However, the issue of abortion is even more complex since it relates to women’s bodily integrity (psychoanalytically speaking, to the minimum requirement for individuation) (Cornell, 1995), state intervention into abortion gains particular meaning with regards to the question of citizenship: “The right to bodily integrity, dependant as it is on social and symbolic recognition, demands the establishment of conditions in which safe abortions are available to women of every race, class, and nationality” (*ibid*, p. 33). Inversely, the inaccessibility of abortion, and the state’s role in the institutionalization of this inaccessibility, is telling about women’s citizenship status.

The Study of Abortion

Abortion has been studied by various disciplines and from various perspectives. In the field of social sciences, among the studies which focus exclusively on abortion, the interest is primarily on the prevalence of abortion across countries or across different (class, racial, ethnic, religious and so forth) segments of a particular society, the differential attitudes towards abortion, the reasons for abortion, and the impact of abortion on women's (psychological) well-being.

My study engages more with another branch of research which, focusing on the legal aspects of abortion, explores the historical transformations of abortion laws (e.g. Htun, 1999), the discrepancies between abortion laws and actual abortion practices (e.g. Lee, 2003), the effects of changes in abortion laws (e.g. Oakley, 2003), or the consequences of state restrictions on abortion (e.g. Whittaker, 2002). Some of these questions have been treated under the more general rubric of population control as well (Kligman, 1998; Greenhalgh and Winckler, 2005). Lastly, I have been inspired by some scholars who have looked into larger political processes from the lens of abortion (Petchesky, 1981).

Alongside the research conducted on the basis of reproductive health, abortion in Turkey has drawn social scientific attention as well. In this literature, 1838, the year when the first edict regulating abortion in the Ottoman Empire was published is considered as marking the passage to modern modes of population control. Tuba Demirci and Selçuk Akşın Somel (2008) focus on the publication of this edict and the legal, medical and ideological measures which followed it over the Ottoman state modernization period (1838-1890), in order to delineate how women's bodies came under state control as part of demographic policies, a primary tool of

modern governance. Gülhan Balsoy (2009) also explores the same historical period, in order to show how the demographic concerns of the state élite were articulated through the control over female body, by concentrating on the anti-abortion debate, the way in which pregnancy was dealt with and the transformation of midwifery.

Ruth Miller (2007a, 2007b) explores the Ottoman, Turkish and French abortion laws in comparative perspective, and delineates the ways in which reproduction was politicised in tandem with modernity and argues that both criminalization and de-criminalization of abortion were essential to modern state and citizenship formation. Akile Gürsoy (1996), exploring the debates surrounding the 1983 legalization of abortion, asserts that in Turkey, the right to decide over women's reproduction that was formerly under exclusive state control has been transferred into their husbands with this law, and argues that the restrictions imposed by this law signal to a new concern for population control rather than state's withdrawing from the reproductive sphere.

Finally, scrutinizing the history of family planning from the perspective of bio-politics, Elif Ekin Akşit (2010), shows how both the late Ottoman and the Turkish states exercised power over women through legal and medical discourses; and how the practical aims of increasing or decreasing birth rates lead unchangingly to the instrumentalization of the female body. She concludes by singling at a new transformation in the politics of population under the AKP government: in this sense, my study can be considered to start from where she leaves, although I do not proceed with her designation of new reproductive technologies as an important dimension of this new paradigm of population planning.

This study, while benefiting extensively from both the information and insights provided by this literature, departs from them in that it tries to grasp the way

in which the regulation of abortion is realised through interplays of power at various levels, to make the connection between the regulation of abortion and other forms of social regulation targeting women, and to contextualize them within larger structures and transformations.

The study of abortion has special significance for thinking about women's citizenship: as noted by Miller, it reveals the "simultaneously biological and political nature of citizenship." In this manner, it allows us to go beyond the discourses of full *versus* partial citizenship, as well as to go beyond the dichotomy between progressiveness and backwardness which considers only which rights are obtained by, and which rights are denied to, women (pp. 354-355). In effect, the liberal concepts of rights have less significance to the relationship between state and subjects, than the politicization of certain areas of life through everyday practices regulated by the state.

While the Foucauldian concepts of governmentality and bio-power have profound explanatory value with respect to the issue, so far as I concentrate less on the micro-construction of subjectivities, of the ways in which subjects are constituted as the agents of their own governance, than in the subjectification strategies deployed by the state, I choose to rely rather on the moral regulation framework which "acknowledges the varied ways in which institutional and customary practices may work together, or in opposition, to shape people's lives and choices" (Feldman, p. 305), except in the first chapter where I focus exclusively on law by using Foucauldian theories and concepts.

My choice of focusing on state practices rather than on women's own narratives about their reproductive lives and abortion is due in part to the predictable difficulties in sampling, in having contact with women from various backgrounds,

and in being able grasp and represent their narratives in an adequate manner. But even more importantly, while that kind of a study would indeed give insight into the ways in which women deal with these issues and the negotiations which frame their choices, it would offer little insight into the more structural factors which shape these frames themselves: “Thus, to understand the conditions shaping identities and subjectivities, we need to appreciate, as a complement to evidentiary materials available directly from women [who act in particular ways], the normative assessments and regulatory practices that historicize and contextualize their everyday lives” (*ibid*).

In this manner, studying the state (and struggling with the problems it creates), seems meaningful. Studying the state *and* gender, to me, seems even more meaningful in that the state, playing a crucial role in the regulation of social forms, is a prominent booster of patriarchy: “Through its laws and policies, symbolic power, the statements and behavior of officials, and subtle patterning of society, the state upholds the sexual division of labor, normative heterosexuality, and war and militarism. Studying gender and the state means analyzing how, why, and where” (Htun, 2005). Abortion is a worthwhile entry point for engaging in this kind of an analysis.

It is widely acknowledged that, even in countries where the legal restrictions on abortion are the harshest, it is always possible to “purchase” this service illegally, be it from doctors who by-pass the law or from untrained performers (Whittaker, 2002). Therefore, the most meaningful feature of legalization of abortion is the provision of this service in public institutions, free of charge. Besides, the state’s control is more visible in public hospitals than in private ones, or at least, it is thought to be so. This is the reason why I conducted field research exclusively in

state hospitals, taking charge of the class limitations it brings with it. In any case, abortion is *always* a class issue, as much as a gender issue, bearing in mind the fact that inequalities are reproduced, rather than eliminated, through legal and health care institutions.

Therefore, the phenomenon that I refer to as the increasing inaccessibility of abortion affects some women more (or rather) than other ones: in practice, not only class, but also marital status and age play important roles in shaping women's experiences of abortion. This study falls short of accounting for the particular effects of these stratifications. But I believe that contextualizing this phenomenon within the political and social field within which it occurs reveals a lot for all women regardless of all their attributes and identities.

Notes on Terminology

In Turkish, the word *kürtaj*, coming from the French word *curettage* which originally is a particular method of abortion, is used as equivalent to “induced abortion”, but in everyday language, it specifically refers to “abortion upon request”. In medical terminology, “abortion” is referred to as *düşük*, and “induced abortion” as *isteğe bağlı düşük*; while *düşük* means, in everyday language, “spontaneous abortion”.

During my research, I almost exclusively used the word *kürtaj* even when talking to the doctors and nurses, and no misunderstandings took place about it. I had to use specifications such as *isteğe bağlı kürtaj* (abortion upon request) only when I had to distinguish it from therapeutic abortion, and only when talking to medical people. In writing the thesis in English, in order to avoid a conflation of words, I will use the term “abortion upon request” instead of simply “abortion” only when it is

important to make the distinction. So when I say “abortion”, it includes both therapeutic abortion and abortion upon request, but not spontaneous abortion.

The legal terminology was a difficulty for me, and after having consulted some English speaking lawyers, I found out that some terms have not exact equivalents in English. So, in translating the words like *genelge*, *tüzük*, *kanun hükmünde kararname* and so forth, I try to use the most approximate terms, and more importantly, to distinguish them from one another.

Finally, although I do not explicitly turn into the materialist feminist theory and terminology throughout the thesis, I should note that I consider “neoliberalism” as the present form of capitalism, and capitalism as always patriarchal. Every time I use the term, I refer to these structures, to the oppression and exploitation of women on the very basis of their being women.³

³ Here, I do not denote an essential difference between men and women on the basis of sex. Post-structuralist theories of gender have taught us the meaninglessness of such claims. I am rather talking about the difference that the particular historical structures inscribe in the bodies, assign to them a particular position in the production and reproduction processes according to the prevalent sexual division of labour.

CHAPTER 2

THE 1983 ABORTION LAW: AN INSTANCE OF LAW'S POWER TO GOVERN

The official history of the Turkish Republic can be read as a catalogue of “glorious achievements ahead of their times”, especially with respect to women’s issues. The centrality of these latter in nationalist discourses of modernity, in Turkey as well as in other contexts, has been extensively studied (Das, 1995; Göle, 1996; Yuval-Davis, 1997). In effect, within the framework of the modernist paradigm which presumes a singular trajectory of progress, women’s condition is taken to represent a particular nation’s rank in the “modernization race”. Legal transformations, which are supposed to dismantle women’s subordination and enhance gender equality, have a central place within these discourses. As noted by Ayşe Parla, Turkey is singled out, by Western as well as Turkish scholars, as a pioneer among the Middle Eastern countries in the marathon to modernity, with frequent reference to legal achievements which are celebrated for establishing gender equality in familial, social and official spheres through marriage, inheritance and labour laws and regulations; such as the substitution of the Muslim family law by the Swiss Civil Code in 1926 (Parla, 2001). The adoption of women’s suffrage, in local elections in 1930, and in national elections in 1934, is the pinnacle in this narrative: on the one hand, it is considered a crucial step in women’s achieving full citizenship rights; and on the other hand, it is considered a pride since this right was accorded to women even before some of the European countries, such as France and Italy.

Being a more controversial one, the right to abort upon request accorded to women is also considered one such “achievement” by some. As a matter of fact, in Turkey, abortion upon request up to the tenth week of pregnancy was legalised in

1983; a time when in many parts of the world it was strictly prohibited except for the cases where the future mother's life was at risk. This early legalisation, by its proponents, has been considered as a marker of Turkey's being ahead of its time; since "its" women have even greater freedom than some of their European "peers". Still, similarly to other rights accorded to women throughout the Republican era, the legalisation of abortion was a top-down process; neither initiated by popular pressure nor provoking public dispute (Ovadia, 1983).

Zehra Arat (1994, p. 72) observes, with regard to Republican reforms at large, that "...treating women as symbols and as tools of modernization and Westernization, rather than as the equal and full partners of men, the Kemalist reforms *intended* to achieve little in changing women's lot." Parallel to this observation, this chapter attempts to demonstrate, legal changes carried out in this manner, which objectify both women and their citizenship rights cannot achieve their declared goals of begetting gender equality. Rather, they set up new structures of power, open up new areas of contest while foreclosing others. I contend that the study of specific processes of making and executing of law, by displaying that law is a contested area of governance rather than a closed rational system of regulation, can contribute to our understanding of the place of legal institutions within the exercise of power as well as of the ways in which power is organised within each context.

The Power of the Law

Normative and formalist theories of modern law tend to view the former as a set of rules and regulations, deriving its legitimacy from the consensual resignation of power from society to the state on the one hand, and from its adherence to the rules

of rationality on the other. Therefore, the state is considered to be an autonomous structure that does not only make but also executes the law. Besides, since the laws are considered rational, they have a certain aspect of inevitability: paralleling the narrative of progress, those theories assume that humanity proceeds on the way towards replacing the laws of nature with the laws of reason. This march can be delayed, but not halted. In other words, it is assumed that as a society becomes more modern, it will get rid of tradition and will adopt rational laws. At the same time, the passage from ‘making’ to ‘executing’ of law is considered to be unproblematic: so far that the basic assumption of this perspective is that of modern rationality, no gap is thought to exist between the written code and real life situations, i.e., its application in practice (Koğacioğlu, 2009).

However, the translation of legal codes into everyday practices is neither direct nor smooth; and the codes themselves are not incontestable and product of an inevitable progress. The large body of literature by the Critical Legal Studies School establishes the incongruence between the juridical forms and social situations to which they are applied on the one hand (Galligan, 1995); and challenge the positivist assumptions on which theories of law are based on the other. One of the most prominent notions of the CLS School is that “law is politics”: in sharp contrast to the positivist notion that “all men are equal before the law”, law and legal doctrine both reflect and confirm existing power hierarchies inherent in any one society, such as class (Kennedy, 1976; Unger, 1983). Although their bringing together law and power is valuable, their Marxian portrayal of law as a mere tool of the state (which, in turn, is deemed a mere tool of the ruling class) does not allow us to grasp the complex ways in which power struggles as well as negotiations and subversions take place

within the 'juridical field'.⁴ A group of feminist scholars, coming from the CLS School tradition, have offered a more enriched perspective by establishing not only the gendered aspect of law to counter its claims to neutrality, but also the CLS School's inability to address it (MacKinnon, 1989; Menkel-Meadow, 1988; Pateman, 1989). They have been criticised, in turn, for not accounting for different kinds of power and reducing all of them into a single frame of male dominance (Brown, 1995), and consequently, for being incapable of offering nuanced accounts of legal institutions (Haney, 2000).

In order to avoid such traps of reductionism, following the literature on the ethnography of the state, I propose to consider the state as a "phenomenological reality [which] is reproduced through discourses and practices of power, produced in local encounters at the everyday level" (Aretxaga, 2003, p. 398), that can be analysed through its structural effects (Mitchell, 2006 [1999]). Law, therefore, can be thought of not as an instrument of a unified "thing" called "the State"; but as one specific area in which state power is exercised, where, in other words, the variety of diverse and often contradictory discourses and practices come together in an interplay of forces and give rise to particular forms of power that we recognize as the state. My contention is that the outcomes of those interplays are historically and contextually contingent but follow the predominant structural forms of domination. In this sense, the law can be considered intentional although nonsubjective (Foucault, 1980, p. 94). In other words, the logic behind the law which sustains structural tendencies can be "deciphered" although it is not carried out by any particular actor.

⁴ I barrow this term from Pierre Bourdieu's constructive contribution to the study of law. However, as I do not concentrate on the 'materialisation of law' in the sense that he uses it, I do not include his analyses to the present work.

The early legalisation of abortion in Turkey, despite the shortcomings of the concerned articles, prevented the issue from becoming a matter of public discussion for a long time. It has begun to be debated publicly only in the last few years, in the aftermath of the changes to Turkish Penal Code made in 2004. According to the original article legalising abortion, the “Law Concerning Population Planning”, law no. 2827, published in the Official Gazette on May 27, 1983, a woman is entitled to abort upon request (i.e. devoid of medical obligation) until the end of the tenth week of pregnancy (Resmi Gazete, 1983a). Yet, this right is delimited by the legal requirement of spousal consent, if she is married, and of parental consent, if she is minor. In contrast, the new Turkish Penal Code, passed on September 26, 2004 does not contain any statement on spousal consent; and does not criminalize abortion upon request with the (adult) pregnant woman’s consent alone (Resmi Gazete, 2004). Although the transfer of the right to decide over a woman’s body to her legal spouse and the problems it occasionally generated for unmarried women in the 1983 article had already been problematised by the feminists, it was only this legal contradiction generated by the 2004 code that allowed people sensitive to the issue to bring it to the fore and to make it relatively more visible in the public through the mass media.

Before returning to the concrete effects of the legal documents on every day practices in the next chapter, I first want to offer an account of the history of abortion laws in Turkey, in order to understand them within the context of changing state politics of population. In addition, I hope that this historical account will offer a better grasp of the contemporary situation, with which I shall be dealing in the following chapters. In proffering this account, I shall try to demonstrate that, contrary to the rationalist assumption, legal transformations neither follow an outright and

inexorable path, nor do they obey the rules of a transcendental rationality, but that they result from power struggles and negotiations within various fields of action.

A History of Abortion Laws in Turkey

The Republic of Turkey, established in the aftermath of the World War I and succeeding Anatolian war, initially was confronted with the problem of underpopulation resulting from casualties of war, mass deportations and exterminations (Adanır and Hilman, 2000; Üngör, 2008). Not surprisingly, the state elite adopted pro-natalist policies, including not only strict legal prohibitions on the use of contraceptives and abortion, but also state incentives promoting birthing, discourses exalting motherhood and condemning abortion as crime. None of those were unprecedented in these lands, however: during the late Ottoman period, that is, during the Ottoman “modernization”, population and public health had already become state concerns and the state intervention into individuals’ bodies through legal and medical professionalism had by then begun (Balsoy, 2009; Miller, 2007b).

The Ottoman state, bearing heavily on Islamic legal tradition, used to treat conjugal matters as belonging to an inviolable private realm until the nineteenth century reform period. This conception allowed women to have greater freedom over their bodies *vis-a-vis* the state, if not *vis-a-vis* their male relatives. While the Koran does not address the issue of abortion directly and there is not a single and unified “Islamic” attitude towards abortion, but a multiplicity of doctrinal interpretations; the Hanafi School, which was predominant in the empire, tolerates abortion during the first 120 days of pregnancy as far as the pregnant woman’s husband is informed of the situation (Asman, 2004). According to the accounts of foreign visitors, abortion

used to be a rather frequent, even banal practice before the Ottoman reform period (Davis, 1986).

During the state modernization that the Ottoman reforms entailed, however, demographic policies were introduced as a means toward military and economic prosperity. Concordantly, abortion was strictly prohibited with imperial edicts from 1838 onwards. A series of legal, medical, administrative and educational policies have been implemented from then on, along with the mobilization of a religious discourse against abortion in the advice press (Demirci & Somel, 2008). This discourse was not founded on specific religious texts, but on a vague contention that abortion was a “violation of the will of God”. However, since it lacked serious underpinnings from Hanafi jurisprudence, commentators consider that this discourse was actually taken on in order to legitimize the policy, which had been issued out of demographic considerations rather than out of genuine religious concerns (Miller, 2007a). Parallel to this, the profession of the midwives was quickly brought under strict state control and their expertise was trivialized, while obstetrics in general, now medicalised, has become an arena ruled exclusively by male experts (Demirci & Somel, 2008).

It was this set of discourses and practices that the Republic has inherited. However, the nationalist narrative of the new Republic depicted its constitution as a great rupture from the Empire: all that pertained to tradition was considered as outdated, backward, premodern, and hence as something that was to be gotten rid of; whereas “the West” signified the modern, and stood for the desired, for that which was to be achieved. Yet, similar to the postcolonial condition laid out by Partha Chatterjee, the West provoked the fear of being totally assimilated as well (Chatterjee, 1986). I will not further elaborate on the inconsistencies and tensions

inherent in this narrative; for my purposes, suffice it to say that the division between the public and the private spheres -whereby the former stands for a modern, secular, rational realm and the latter for an affective one governed by traditional rules- has allowed competing discourses on modernity and tradition to coexist within the same narrative. On the other hand, echoing the orientalist preoccupation with the status of women in the East, especially in the Muslim East; the republican narrative was excessively preoccupied with the issues pertaining to the ‘woman question’(Kandiyoti, 1990; Tekeli, 1990).

In this manner, the great rupture from the empire that the new republic’s ruling elite was envisaging altered the content of the natalist discourses despite the continuity of the policy. The abandonment of the Islamic discourse brought women’s bodies under greater state control through legal and medical institutions. The promotion of motherhood and condemnation of abortion were now buttressed not with reference to the “will of God”, but to the prosperity of the nation: not only economic success, but also military security were deemed to require the citizenry to proliferate in number. Within the republican narrative, women were assigned a crucial role as “the mothers of the nation”, and were expected to give birth to as many -healthy- children as possible: added to the obsession with increasing the population was the consideration of mother and infant health as important indices of modernity. But as Zehra Arat (1994; p. 58) notes, “Kemalist reforms were *not* aimed at liberating women or at promoting the development of female consciousness and feminine identity. Instead, they strove up to equip Turkish women with the education and skills that would improve their contributions to the republican patriarchy by making them better wives and mothers.” Not surprisingly, therefore, under the law

passed in 1930, both contraceptives and abortion were made illegal and large families were promoted through a series of legal incentives (Çokar, 2008).

The radical shift in the trajectory of population politics of the Republic took place in the 1960s. Mainly economic factors are considered to account for this shift. Having been a substantially agricultural country, Turkey needed to be populous until the large-scale mechanization of agriculture through state subsidies in the 1950s. From then on, a considerable part of the rural population became superfluous in agriculture in the economic sense, and the first extensive wave of migration from rural areas to urban centres began in the second half of the 1950's (Keyder, 1987). According to Çağlar Keyder, within the ten years following 1950, the population of the cities in Turkey rose by 75 percent, indicating that one out of every ten persons living in rural areas migrated to urban centres in this period.

However, neither the level of industrialization, nor the infrastructural capacities of the cities were ready to absorb these large numbers of people. Consequently, the discourse of “too-rapid” population growth emerged: population growth was no longer regarded as a source of national strength but as the fundamental cause of a variety of economic and social ills. This can be thought in the framework of the “...larger international trend that began in the 1960s, whereby population activities moved into a separate sector of development,” as described by Katherine Maternowska (2006; p. 27). Through this process, family planning broke away from the larger public health care structure and became a distinct area of expertise calling for different sorts of intervention. In Turkey, this process was accompanied by -and substantiated through- a discourse which depicted high fertility rates as a sign of ignorance and backwardness. In addition, high fertility was assigned to women's irresponsibility - as if birthing had not been promoted with state

incentives until recently (İlkkaracan, 2008). Akşit (2010) draws attention to the paternalistic aspect of the relationship between the state and its citizens that this new policy establishes: the state's role in family planning was not providing information and counselling, but controlling people's fertility. 'The people' (more specifically, women) on the other hand, were viewed as a homogeneous mass in need of being disciplined.

The First Five Year Development Plan (1963) identified rapid population growth as a factor hindering desired economic development (Gürsoy, 1996). In what follows, a "Family Planning" policy has been adopted: legal prohibitions over the sale and use of contraceptives have been removed in 1965 with the "Population Planning Law". Yet, little has been done at the level of medical and educational institutions to propagate their use or make them more accessible throughout the country (Nusret, 1973). Although the negotiations over the legalisation of abortion started with the passing of the 1965 law, it remained legally prohibited while it was commonly practiced: many women performed self-induced abortions, which frequently ended up in deaths or serious health problems; or underwent illegal operations by experts as well as by non-experts, which were frequently realised at very high prices and under unfavourable conditions, consequently having almost as serious outcomes on women's health as self-induced ones (Çokar, 2008; Gürsoy, 1996).

The debates went on throughout the 1970s, still on the grounds of maternal and infant health rather than of women's rights. Among state officials, as within society at large, views on abortion were greatly diversified. Arguments against the legalisation came mostly from conservative factions: the opponents basically argued that legalised abortion was a threat to Turkish morality and family values, and that

family planning should be carried out without resorting to abortion. There were those who, adopting more restrictive Islamic interpretations, advocated the foetus' right to live on religious grounds. Lastly, there were those who considered the issue not in religious or moral terms, but were nonetheless reluctant to support legalisation because they thought the current situation of health care services in the country were simply not able to respond to that extra burden (Gürsoy, 1996).

Among those who supported the legalisation, the most prominent perspective was a developmentalist one; which was defended either on the grounds of Turkey's need to achieve a sustainable population growth rate in accordance with to its socio-economic structure; or, acknowledging the fact that although illegal, abortion was widely practiced, on the grounds of public health concerns. This latter stance emphasized both the human and the financial costs of preserving the ban on abortions which fuelled the illegal practice of it: not only women were damaging their health and even dying because of abortions practiced in adverse conditions, the treatment of those injured also put a serious burden on the public health care budget.

On September 12, 1980, the National Security Council (*Milli Güvenlik Konseyi*), composed of five top military leaders took hold of power; the Turkish Parliament was dissolved, the Constitution was abolished and all political parties were prohibited from any activity. One year later, by the military administration's orders, a legislative assembly for the preparation of a new constitution, called the Advisory Council (*Danışma Meclisi*), was assembled. Although the removal of the abortion ban had been on the government's agenda and even a draft code had been prepared prior to the coup, the legalisation could have been realised only by the interim government, which had no concerns about popular electoral support.

Actually, there was no consensus over the issue within the assembly even then. For

instance, a member of the Advisory Council, Beşir Hamitoğulları, arguing against the right to abort, said:

The mother's uterus is not a travelers' inn. A woman's uterus is not a cellar for timber or lumber that can be loaded and unloaded whenever wanted.⁵

But the opposite tendency was gaining weight, especially after the illegal yet frequent practice of abortion was officially recognized by Kaya Kılıçturgay, then the Minister of Health and Social Welfare of the military government:

The Abortion Law [*sic*] is valuable for the protection of the mother's health. In Turkey, covert abortion has never been prevented. I should remind those who oppose the law that 500,000 abortions are practiced every year in Turkey, and that almost 15,000 women die because of this.⁶

To sum up, while many reasons were cited for and against legalisation, almost none of them took into account women's rights and choices. The discourses on abortion fitted nicely into the modernist/nationalist paradigm, the gendered character of which was, once again, evident: women were addressed primarily not as citizens, but as mothers; not as bearers of rights, but as protection seekers. What I want to underline is that this was the case not only for state officials, but also for medical, legal and planning experts.⁷

⁵ "Ana rahmi yolgeçen hanı değildir. Kadın rahmi kalas ya da kereste deposu değildir. İstenildiği zaman tahliye edilsin, istenildiği zaman yüklensin. *Milliyet*, 15.04.1983.

⁶ "Kürtaj Yasası, ana sağlığının korunması için yararlıdır. Türkiye'de üstü kapalı kürtaj bir türlü önlenememiştir. Yasaya karşı çıkanlara her yıl Türkiye'de 15 bin kürtaj yapıldığını ve 15 bine yakın kadının yaşamını yitirdiğini belirtmekte yarar var." *Milliyet*, 06.10.1982.

⁷ Although there was a general instruction from the government to gynecologists recommending not to make public statements on the issue of abortion, those in collaboration with the government benefited from their position in order to defend their (pro- and con- alike) causes in various media. For instance, in *Milliyet* newspaper's column entitled "Thoughts of the Thinking" (*Düşünenlerin Düşünceleri*), many such experts commented on the issue during 1982 and 1983. As I noted above, their arguments centered heavily on public concerns whereas women's rights and choices, if they ever were, only marginally included.

In what followed, a committee of experts with sixty members was charged to prepare a report on the current situation with regards to fertility, mother and infant health, and abortion. A report was then presented to Kenan Evren, the military junta leader himself, then the president of Republic. One year later, in 1983, the “Law Concerning Population Planning”, which legalised abortion upon request up to the tenth week of pregnancy with the consent of both spouses, was passed. The primary goal of this law was declared as the prevention of women’s deaths due to unsafe abortions, rather than controlling the population growth. The next step entailed, (in addition to the permission to practice abortion upon request within the legal limits accorded to public clinics and hospitals) the opening of family planning centres (*Aile Planlama Merkezleri* - APs) in state hospitals, and “Dispensaries for Family Planning / Mother and Child’s Health” (*Aile Planlaması / Ana Çocuk Sağlığı Dispanserleri*) countrywide. A further statute, concerning the rules and regulations for these latter was composed the same year. Both kinds of centres were to provide counselling and birth control services, free of charge. Abortion were provided only in the former kind, until when the latter have been renamed as “Centres for Mother and Child’s Health / Family Planning” (*Aile Planlaması / Ana-Çocuk Sağlığı Merkezleri* - AÇS/APs), and took up this task as well.

Since then, abortion has been provided in the hospitals’ family planning units and AÇS/APs⁸ and has never become a concern of major public debate in Turkey. One of the oft-cited shortcomings of the 1983 law has been revised during the renewal of the penal code in 2004, and criminal sanctions on abortion upon request up to twentieth week of pregnancy in cases of sexual assault have been

⁸ As a matter of fact, not all hospitals and all AÇS/APs are providing abortion, but I will go into this issue in the next chapter.

removed; but the Law Concerning Population Planning itself has not been changed despite the criticisms made by CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) with regard to its limitations. Statistics on abortion are sporadic and not conducted by official statistics institutions. It is thus almost impossible to know the exact numbers. Then again, Çokar (2008; p.226) asserts that approximately three out of four abortions are carried out by private practitioners in private clinics; a fact which, he postulates, that there are major problems in the public sector with respect to the provision of abortion.

This kind of a historical overview of the politics of population and abortion laws, policies and discourses allows us to grasp a narrative account of the “state’s attitude” and the transformations it underwent. However, as I stated earlier, this is possible only at that particular level of abstraction, and deducing insights from it for other areas can be misleading. Such a perspective would, for instance, fall short of explaining the fact that the right to abort has been accomplished under the rule of a military government, which conventionally would be expected to reinforce gender roles and identities, and obstruct liberalization with regard to women’s rights. However, as Mala Htun shows in her study on the gender reforms enacted by military governments in Latin America, “each gender rights reform is unique... Shifts in power configurations that open policy windows for change on one issue may not lead to change on other issues... State policy on gender [in Latin America] is not a mere reflex of democratization, modernization, the emergence of women’s movements, the evolution of political culture, or the consolidation of global norms; it is a product of human agency” (Htun,1999; pp. 32-33) .

Taking the issue of agency seriously, I contend that the state, rather than having its own autonomous rationality and imposing it onto society through laws and

policies, only retrospectively gains this appearance of a coherent entity. In other words, it is the laws passed and the policies adopted, together with the discourses that support them, which constitute ‘the State’, and bequeath it with a presence of its own as a rational, monolithic entity. Therefore, in order to grasp the ways in which state power operates, we need another set of conceptual tools. In the following sections, drawing on Michel Foucault’s concept of governmentality and on theoretical discussions on the functioning of law, I shall focus on the passing of the 1983 abortion law in order to elucidate what I mean by “law as an area of governance”, a term which will be useful for the analysis of the contemporary situation in public hospitals that I will undertake in the next chapter.

The ‘State’ and the Law

The question of how to analyse the state has long been the subject of political and social sciences. Whereas classical and neo-classical accounts of the state have focussed on the question of who possesses the state power and deploys it to what ends, critical approaches have interrogated the dynamics of the power relations that together make up for what we recognize as ‘the State’ (Abrams, 2006 [1977]; Mitchell, 2006 [1999]).

One of the most prominent interventions into the study of the state has been made by Michel Foucault, by turning the question from that of the state to that of power: “The state is not a universal nor in itself an autonomous source of power. The state is nothing else but the effect, the profile, the mobile shape of a perpetual statification or statifications.... The state is nothing else but the mobile effect of a regime of multiple governmentalities” (Foucault, 2008, p. 77). While this

conceptualization opens a new path for the analysis of the state by shifting the focus towards the effects of power, the term governmentality plays a key role within this framework. Foucault uses the term governmentality in two different senses: at a more general level, it denotes a rationality for government, as in the statement above. But the term refers also to the particular form of governance which is prevalent today's societies; and which can briefly be defined as comprising of disciplinary power at one end and bio-power on the other, whereby the former is applied on the individual body and the latter on the population at large.⁹ This form of power, which has developed into a series of governing apparatuses (*appareils*) on the one hand, and a series of knowledges (*savoirs*) on the other, is primarily concerned with the health, wealth and security of the population living in a particular territory, while at the same time it diffuses modes of self-regulatory governance throughout the society (Foucault, 2007). Furthermore, as far as government is not (only) a repressive force but is also *productive* – of subjects, as well as of knowledge and truth, it “...is intrinsically linked to the activities of expertise, whose role is not one of weaving an all-pervasive web of 'social control', but of enacting assorted attempts at the calculated administration of diverse aspects of conduct through countless, often competing, local tactics of education, persuasion, inducement, management, incitement, motivation and encouragement” (Rose and Miller, 1992, p. 175).

Governmentality, therefore, offers a resourceful perspective for studying the ways in which the state, law and medicine come together and affect bodies and

⁹ This does not mean, however, that sovereign power which characterizes the Medieval ages and which is basically concerned about the imposition of customary law and which is crystallised in the sovereign right to kill has been surpassed; but that it now coexists with discipline and bio-power: “Accordingly, we need to see things not in terms of the replacement a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society of by a society of government; in reality one has a triangle, sovereignty-discipline-government, which has the population as its primary target.” (Foucault, 2006 [1991], p. 142)

populations in particular manners (Akşit, 2010; Reed and Saukko, 2010; Smart, 1992). I shall examine this interplay in the context of the 1983 legalization, in order to delineate not only this particular ‘state effect’, but also the ‘law effect’: I argue that the law, rather than being a coherent entity, comes to be considered as such through the effect of certain interplays of power. Furthermore, the constitution of the state and of the law as autonomous structures is the product of, or rather, the intertwined effects of, the same processes.

Mainstream legal thought, which permeates our everyday notions of law to a great extent, portrays it as an objective and rational structure. Peter Fitzpatrick defines modern law as mythology, or more precisely, as a form of “mythology of modernity”, and makes out its mythic composition in its contradictory attributes: “Law is autonomous yet socially contingent. It is identified with stability and order yet it changes and is historically responsive. Law is a sovereign imperative yet the expression of a popular spirit. Its quasi-religious transcendence stands in opposition to its mundane temporality” (Fitzpatrick, 1992, p. x). In addition, he points at other mythologies of modernity that law is intertwined with, namely, progress and nation.

In effect, the historical study of modern law reveals how it is inextricably bounded together with those latter mythologies within the imagination of modernity. Not only did the emergence of the modern law as the antithesis of the natural law temporally coincide with the rise of the ideas of nation and progress, but within a closed cross-referential system, the concepts of law, nation and progress undergirded each other so that they served to discursively by-pass the paradoxes lying beneath each one of them. Whereas law’s claim to universality is denied by the existence of national laws, this paradox is resolved with reference to the levels of progress of nations. Furthermore, since the modern rationality has the quality of a quasi-

transcendental point of reference; the law, which derives its authority from there, has the power to assert itself as an immutable set of rules, “...change becomes a refinement of legal order and contributes towards its perfection” (Fitzpatrick, 1992, p. 91), in line with the idea of open-ended progress.

In this manner, the interplay of the law, nation and progress bears special significance in Third-world nationalist and postcolonial contexts, where the Western concept of the rule of law is imported through what Ugo Mattei and Laura Nader call “diffusion by prestige” (Mattei and Nader, 2008). Within these contexts, the ruling elite views the existing institutional setting of the country as inferior with respect to legal complexity required by modernity, and aims at reaching ‘the level of civilized nations’ by adopting Western legal institutions.¹⁰ In this manner, “...if the transplant “fails”, [...] it is the recipient society that receives the blame” (p. 20). The myth is thus doubly reinforced.

However, numerous empirical and theoretical works by critical social scientists have established that “the most corrosive message of legal history is the message of contingency” (Mensch, 1998; p.23), in the West as well as in ‘the Rest’. One of my objectives is to show that this is exactly the case for the 1983 Turkish abortion law as well. But this is not the whole story. My point is that contingency does not imply mere haphazardness, and that the analysis of the contingent outcome of legal processes can say much about the structures within which they are brought into existence: about the state, about patriarchy and about neoliberal capitalism.

¹⁰ This process, of course, is not as simple as this short summary depicts it. For a detailed analysis of the reception of Western ideas during the early years of the Republic, see Ahiska, 2010.

Governing Abortion

As I stated above, the draft for the article concerning abortion was prepared under the consultation of a professionals' committee, which was comprised of medical, legal and planning 'experts'. Actually it was not an "abortion law" as such, but a law which aimed at regulating issues regarding birth control more generally; since the use of contraceptives, abortion and sterilization were all packaged together in the same article. The draft suggested not only the legalisation of abortion upon request, but also the training of general practitioners (*pratisyen hekim*- GP) for its operation, and that of midwives for the insertion of IUDs (intra uterus devices). Two points were particularly critical: first, the time limit for abortion upon request was set as the twelfth week of pregnancy; second, if the pregnant woman was married, the consent of her spouse was deemed necessary. The draft was subsequently discussed in an Advisory Council's meeting on April 4, 1983; but the debates focused mostly on the 'sanctioning' (*serbest bırakılma*) of abortion rather than on other "collateral" issues, i.e., on the specificities of its regulation.

I have accessed the proceedings of that meeting from the Turkish Parliament's archive. The meeting starts with a presentation by the president of the Health and Social Issues Commission, Zeki Çakmakçı. Çakmakçı insists that the aim of the draft article is not to restrict the number of children that families can have; but rather to allow people to avoid having more children than they want to have. The dissemination and widespread use of contraceptives, he states, is the preferred way to achieve this end; but since no contraceptive method is hundred percent effective, the legalisation of abortion is nonetheless necessary. Furthermore, he argues that the increase in social and economic resources in Turkey cannot catch up with the

population increase, and connects the rapid population increase with families' lack of access to family planning methods, not to their lack of willingness to use them: the high percentage of deaths due to unsafe, often self-induced abortions shows, he maintains, is a marker of this. Therefore, he concludes, the legalization of abortion is urgent not only in order to hinder the excessive population increase, but also in order to prevent women's deaths due to unsafe abortions.

In reading the proceedings, what strikes one most is that both the proponents and opponents basically use the same arguments, but they just draw opposite conclusions. The most cited ones can be categorized as 'economic/developmentalist' arguments. The proponents used statistics, projections, or merely common knowledge in order to demonstrate that Turkey's population growth was unsustainable and that caused social ills hindering development, which were considered to be:

The excessive increase in population increases the number of the unemployed, and this brings about economic and political issues. The excessive increase in population fosters consumption and this constitutes one factor fostering the inflation. The rapid increase in population stimulates migration from rural to urban areas, and causes unhealthy settlement areas which lack roads, water and drainage. (...) Rapid population growth restricts the welfare per capita, and fosters oil and energy consumption.¹¹

While the opponents attributed all of these predicaments to insufficiencies in planning, and using different statistics (or simply different statistical interpretations), they asserted that rapid population growth was ever more desirable:

...Today, Turkey has the conditions to feed a population of 100 million, and we verbalize our pride of being among the six self-

¹¹ Aşırı nüfus artışı işsizlerin sayısını artırmakta ve bu da ekonomik ve politik hadiseleri beraberinde getirmektedir. Aşırı nüfus artışı tükeimi artırmakta ve bu da enflasyonun sebeplerinden birini teşkil etmektedir. Hızlı nüfus artışı, köyden şehre göçü teşvik etmekte ve şehirlerin etrafında, yolu, suyu, kanalizasyonu olmayan gayri sıhhi iskan yerlerinin meydana gelmesine sebep olmaktadır. (...) Hızlı nüfus artışı kişi başına düşen refah artışını sınırlandırmakta, petrol ve enerji tüketimini de artırmaktadır. E. Yıldırım Avcı, p. 416.

sufficient countries in the world that are able to feed themselves. Then, if we consider that our resources are present and enough for feeding a much dense population than our current population, it means that our economists do not handle this issue the way that they should do.¹²

In addition to this prominent theme, during the discussions, the proponents urged for the legalisation in order to prevent women's deaths due to unsafe abortions, and to be able to provide better care for the newborns; by contrast, the opponents advocated that abortion was hazardous to women's health. Examples from other countries were brought forth by both camps. Both tolerant and restrictive Islamic arguments were used. In the name of family values, proponents suggested that the larger the families, the less care each individual within families received, which sorted out that large families were incompatible with Turkish family values; whereas the opponents asserted that the Turkish family had intrinsic values with which abortion was incompatible.

What is most astonishing in the proceedings is the paucity of technicality. No discussant, even when he or she¹³ employed numbers and statistics, seemed willing to refrain from deploying dramatic images and metaphors. Nobody asked any questions about the details of the draft (although some members of the consultation committee were present in the meeting), instead, they were commenting (be it for or against) in an all-or-none fashion, and with rhetorics running high. What was being cited was not a particular group of citizens' (women's) rights; but moral and paternalistic projections and comments about women's behaviour:

¹² "...bugün Türkiye 100 milyon nüfusu besleyecek durumdadır ve dünyada kendi kendine yeterli ve kendi kendini besleyebilen altı devletten birisi olmak iftiharını her zaman dile getiriyoruz. Şu halde; kaynaklarımız mevcut ve bizim memleketimizin bizden çok daha fazla nüfusu beslemesine muktedir olduğunu düşünürsek, kala kala iş, bizim iktisatçılarımızın bu işi gerektiği gibi ele almalarına geliyor." İhsan Göksel, p. 418.

¹³ Actually, only one woman took address in that meeting.

Turkish society has never been accustomed [to abortion], in religious terms as well as in terms of its traditions. Those kinds of things are in demand rather among our urban ladies. We all know how much unappreciated things our urban ladies do today. Cocktails, cooncan parties and many other things... (...) If, today, we base abortion on individual request, believe me, prostitution will be increased; believe me that the dignity attributed to virginity will decrease.¹⁴

Or again:

The family type created by the mother and father who prefer welfare over making children; their own welfare, and there is underlying egoism here; preferring egoistically not to make children in order to provide their own well being, I think that this is not the Turkish family type.¹⁵

Even women's nature was called upon:

A woman, when she is pregnant, needs to and must give birth to that child. If this sublime function is halted through abortion, her spiritual and corporeal systems would crush under her own soul's wrecking. Boredom, emptiness, rout feeling, weariness, all in all, an unbearable situation of mourning would affect her bodily structure, even her personality, [she] would sink into the devastating darkness of the accomplished crime; can tell nobody about this, would suffer from her miserable nervous system during her entire life. I think that this torment will not be assigned to the blessed and noble Turkish mother through the law's own warrant.¹⁶

Evidently, what was being fought over were the idea(l)s of nation, of modernization, of development, of family, of motherhood and of women's proper place in society.

¹⁴ Türk toplumu hiçbir zaman ne dinen, ne de kendi gelenek ve görenekleri itibariyle [kürtaja] alışkın değildir. Bu gibi şeyler daha ziyade şehirli hanımlarımız arasında revaç bulmaktadır. Bugün şehirli hanımlarımızın bir çoğunun beğenilmedik ne çok şeyler yaptığını hepimiz biliyoruz. Kokteyller, konken partileri ve daha başka başka şeyler... Bugün, eğer biz çocuk aldırmaı isteğe bağlarsak, inanınız ki, Türkiye'de fuhuş artacaktır; inanınız ki, bekaretin azizliği eksilecektir. (İhsan Göksel, p. 419)

¹⁵ Refahı çocuk yapmaya tercih eden; kendi refahını ki, burada bir egoizm yatmaktadır; bu egoizm ile kendi refahını sağlamak için çocuk yapmamayı tercih eden anne babanın oluşturduğu aile tipi, bence Türk aile tipi değildir. (Mehmet Aydar, p. 429)

¹⁶ Bir kadın hamile olduğu takdirde, bu çocuğu doğurmak ihtiyaç ve zarurettedir. Bu ulvi vazife kürtajla durdurulur ise, ruhi ve bedeni sistemi bizzat kendi nefsinin enkazı altında ezilir. Sıkıntı, boşluk, hezimet hissi, bıkkınlık, neticede dayanılması güç bir yeis hali vücut yapısını, hatta şahsiyetini tesiri altına alır, işlenilen suçun kahredici zifiri karanlığına gömülür kimselere bir şey söyleyemez, perişan sinir sistemi ile ömrünce ıstırap çeker. Sanıyorum ki, muhterem ve asil Türk anasına kanun gayretiyle bu cefa layık görülmecektir. (Mehmet Pamak, p. 442)

But the most astonishing aspect disclosing the arbitrariness of this process was related to me in a personal interview by Ayşe Akın, a senior gynaecologist and a member of the consultation committee:

...To sum up, after all these meetings the article was opened up for negotiations. We had said 12 weeks, there is the midwives' issue, there is the general practitioners' issue; we went there. The [Health and Social Welfare] Minister and [his] undersecretary are sitting in the front row, we, as the support group, are behind them; and there are lots of people in front of us, the members of the Council, I mean the parliament members, they take the floor and read romantic poems, taking the foetus' fingers for blossoming flowers... Roughly ten or twelve persons have delivered very adversary speeches. Of course, we immediately write information notes about what they say and give them to Mr. Kaya (Kaya Kılıçturgay, the Health and Social Welfare Minister), because it is a very technical matter. Then the chairman gave a tea break. We just couldn't get up, sat there in paralyzed manner. We thought that the article was gone, we had lost it. The Minister said it's all over with us, we have done all that we could. Then someone from the health commission came to us, I don't remember his name. He said I will tell you something. The health commission wants this: let the limit not be 12 weeks, let the Ministry reduce it to 10 weeks. Then they also will be supportive. Otherwise, they won't be supportive. As for me, as a gynaecologist, if abortion will be legalised, let it be 10 weeks, it's not a big deal. It would have been better if it were not reduced, but if it is, it's not a big problem. We said okay. *It was a compromise, we compromised.*¹⁷

As pointed out by Nicolas Rose, expertise, as a new form of authority generated by nineteenth century liberalism, has played a crucial role in the government of populations and individuals from then on (Rose, 1993). Expertise, with its claim to

¹⁷ "...Hasılı bütün bu görüşmelerden sonra yasa görüşülmeye gidiyor. İşte biz 12 hafta demişiz, ebe hemşire var, pratisyen hekim var, gittik. Bakan ve müsteşar önümüzde oturuyor, biz support group arka sıralarındayız, ve bir sürü insan karşımızda, Danışma Kurulu üyeleri yani millet vekilleri söz alıyor, ve böyle romantik şiirler okuyorlar, aman embriyonun parmakları da çiçek gibi tomurcuklaşmış filan... Aşağı yukarı bir 10-12 kişi çok aksi konuşmalar yaptı. Tabii onların dile getirdikleriyle ilgili biz hemen bilgi notu yazıp Kaya Bey'e veriyoruz. Çünkü çok teknik bir konu. Sonra başkan çay arası verdi. Biz böyle yerimizden kalkamadık felçli gibi. Dedik gitti, yasayı kaybediyoruz. Bakan döndü napalım dedi, biz elimizden geleni yaptık bu kadar dedi. O ara sağlık komisyonundan birisi geldi, ismini falan hatırlamıyorum. Dedi ki bakın size bişey söyleyeceğim. Sağlık Komisyonu'nun isteği şu: 12 hafta olmasın, siz bunu 10 haftaya çekin Bakanlık olarak. O zaman onlar da destekleyici davranacaklar aksi takdirde desteklemeyecekler. Şimdi kadın doğumcu olarak benim için, abortus yasallaşsa, nolacak, hafta da 10'a çekilsin. Çekilmese daha iyi ama çekilirse de o kadar bir mahzuru yok. Biz olur dedik. Taviz yani bu, taviz verdik." Personal interview with Ayşe Akın, 06.01.2011.

positive, objective and universal truth, offers a basis for the making of the law and allows the latter to present itself as a “value-neutral technology rather than a political instrument” (Mattei and Nader, 2008, p. 73).

But there is a notable double-bind here. If the law resorts to science to find itself a legitimate basis, the reverse is also true: “...The claim of [the scientific] knowledge in its own terms to ‘scientific’ and ‘true’ status is never entirely and convincingly made out... what agency can help to (re)constitute disciplinary power and the failed discourse of the human sciences? The answer, or at any rate one of the answers... is law” (Golder and Fitzpatrick, 2010, p. 63). In saying this, I do not mean that the relationship between them is symmetrical. I am just trying to point out that the political power, the law and scientific knowledge *compromise* within ‘a single process of epistemological-juridical formation’ (Foucault, 1991, p. 23), producing a regime for governing bodies and populations. Actually, as Didier Fassin (2007) shows in his brilliant ethnography on the politics of AIDS in South Africa, different, even contradictory scientific views on one particular issue may coexist and make equally assertive claims to truth at one and the same time. What allows one among them to establish itself as ‘the Truth’ is the law makers’ contingent and arbitrary, sometimes seemingly devoid of logic, but nonetheless contextually and structurally wrought decisions:

Our proposition was... 12 weeks, because we call it “the first trimester”; you divide the pregnancy into three periods. The complications that might occur during the first trimester are roughly the same... We, as doctors, found it even bizarre, that they took these two weeks so seriously. It was absurd, in my opinion.¹⁸

¹⁸ “Bizim önerimiz...12 hafta, çünkü “birinci trimestr” deriz biz; gebeliği üçe bölerseniz. Birinci trimestrde yaptığınız sonlandırmada karşılaşıcağınız komplikasyon üç aşağı beş yukarı aynıdır... Biz hekimler olarak tuhafımıza bile gitti o iki haftanın bu kadar üstünde durmaları. Anlamsızdı bana göre.” Personal interview with Ayşe Akın, 06.01.2011.

Absurd, perhaps. Yet, the article was passed on May 24, 1983, by being voted in total and item by item; and the only objection that came pertained to its title.¹⁹ In what followed, that is, during almost thirty years, this “absurd” law has drawn the legal contours of the abortion practices.

I contend that the arbitrariness which becomes visible in the process of the preparation of the official material, is not a shortcoming of the Turkish legal system but an inherent quality of the modern law, exactly because of the paradoxical relationship between politics, law and science described above. In effect, at that time, even only among the European countries, the time limit was greatly diversified (and it still is), ranging from ten to twenty-four weeks; leaving aside countries where it was strictly prohibited. This diversity, I argue, does not arise from the differences in the levels of modernization or of technological advancement. The point is that positive science cannot have the last word over such an issue, which is essentially a political one. Which, in other words, cannot be decided over definitively by any particular locus of power in the context of governmentality, but can only be governed through this interplay among multiple authorities.

Mala Htun (1999; p. 11) describes the processes of legal transformation in the field of gender rights with recourse to the concept of the “policy window”:
“Gender-related reforms, like policy changes in other areas, originate in the mobilization of reformers around ideas. Laws and policies change when a ‘policy window’ opens that allows these reformers to gain necessary executive or

¹⁹ Dr. Necdet Erenus, who was the president of the Gyneacology Association and a member of the Justice Commission, pointed at the contradiction between the term “population planning” in the proposed title and the expression “to allow individuals to have as many children as they want to have, and when they want to have” that the second item of the draft indicated. He stated that the original proposition for the title referred to “family planning” and not “population planning.” But his objection was not accepted: it was considered that the terms “population planning”, “family planning” and “birth control” could be used interchangeably; and that the term “family planning” could trigger social reaction, whereas “population planning” had become normalized.

congressional support for their proposals.” For one thing, it is true that the reformers’ agency has been crucial for the preparation and the passing of the 1983 abortion law, as was the case for many other health reforms in Turkey (cf. Günel, 2008). Lobbying efforts for the legalization of abortion upon request have started in Turkey as early as the 1960s: Nusret Fişek, a doctor and a public health planner, a very prominent figure in the history of Turkish health care policy who was dedicated to the socialization of health services, had advocated legal change in favour of legalization along with the liberalization of contraceptives. The 1983 legalization was mainly due to the success of doctors coming from the public health tradition, many of them disciples of Nusret Fişek himself, in documenting the adverse consequences of the legal prohibition of abortion and in convincing a number of influential state officials, among them the junta leader himself²⁰, of the necessity of legalizing abortion. However, the reasons for and the motives of the legalization, by themselves, tell us little about the effects produced by it. I therefore propose to focus more on the content of the article legalizing abortion upon request in order to better grasp its effects at the level of application, which are better able to inform us about the larger picture.

In sharp contrast to the preoccupation with the time limit, the inclusion of the requirement of spousal consent for married women in order to be able to abort upon request to the article has been suspiciously absent from the debate. In fact, in the Advisory Council’s meeting, there were only some indifferent remarks about it – although later it was to become the more severely criticized aspect of the article no. 2827. Ayşe Akın, upon my question, answered unconcernedly:

²⁰ Personal interview with Ayşe Akın, 06.01.2011.

“It has perhaps smoothed the process of legalization. It has not been talked about very much... the husband’s consent... for one thing, he does not have to be physically present there, his signature is sufficient. If the doctor, those who provide the health service, are on the woman’s side, prioritize the woman’s health, would seek to facilitate things for her. I don’t ever remember a woman coming and applying [to be turned down]... anyhow, when she comes, she is given an appointment. While getting the appointment, her husband’s signature may well be...”²¹ [shakes her hand as if she was signing something.]

Actually, a medical doctor who has academically been interested in the issue of abortion whom I interviewed was more open to the question: he said to me that practitioners did not push for the spousal consent, and that they just left the forms blank or advised the women to fake their husband’s signature. I shall return to this point in the following chapter where I will be discussing the customary practices in hospitals. What I want to hint, at this point, is the incompleteness of the compromise in question: at the conjunctures where the compromise fails, there are side-steps, spaces for manoeuvre and circumventions that are not only available, but also predominantly condoned.

In the remaining part of this chapter, I shall try to offer a framework for thinking about how the law operates in the government of abortion. In so doing, I shall draw on an ongoing debate on the place of law in Foucault’s theory. However, my aim is not merely exegetical and I am by no means trying to offer a comprehensive account of law in Foucault’s work, let alone the most accurate one. Actually, in offering my own framework of analysis, I shall depart from his theory in

²¹ “Yasalaşma sürecini kolaylaştırmış olması mümkündür. Çok dile gelmedi... Koca izni.. bir kere fizik olarak olması şart değil, imzası yeterli. Eğer hekim, sağlık hizmeti verenler, kadından yanaysa, kadın sağlığını düşünüyorsa, kolaylaştırmak için uğraşır. Ben hiç hatırlamıyorum ki kadın gelsin, başvursun [ve reddedilsin]... zaten geldiği vakit ona bir randevu veriliyor. Randevu verilirken pekala eşinin imzasını...” Personal interview with Ayşe Akın, 06.01.2011.

some important ways, but I nonetheless believe that Foucauldian concepts provide an appropriate lens for locating law within contemporary power relations.

Law as an Area of Governance

From 1970's onwards, several commentators (for instance; Hirst, 1986; Hunt and Wickham, 1994; Poulantzas, 2000 [1978]; de Sousa Santos, 2002) have asserted that Foucault fell short of giving a proper place to law within his paradigm of modernity: according to this view which focuses mostly on *Discipline and Punish*, in the Foucauldian paradigm, modernity was marked by the gradual replacement of law which is a mere apparatus of repression, by more nuanced and productive forms of power, namely, the disciplines. In other words, it is argued that Foucault dismissed the role of the law in contemporary society by assigning it a residual role of social control, and regarding it as superseded by more pervasive modes of normalizing power. Ben Golder and Peter Fitzpatrick, calling this view "the expulsion of law hypothesis", counterpose another group of thinkers to this, whom they gather under the label of "compatibility thesis" (Golder and Fitzpatrick, 2010).

The latter accepted the divide between law and norm, or between law and bio-power, but they nonetheless opposed to the "expulsion of law hypothesis" by underlining the ongoing relevance of the law in modern societies from a number of standpoints. One such prospect, pioneered by François Ewald, criticizes the expulsion of law hypothesis for missing the distinction, or more accurately, the opposition between 'the legal' and 'the juridical'. According to this view, with respect to Foucault's work, it is 'the juridical' which stands for the sovereign modality of power, and which has lost its importance in modernity, not the law *per*

se. By contrast, ‘the legal’, which involves normalization, has more and more proliferated in modern societies. Ewald (1988, cited in Golder and Fitzpatrick) advances the term ‘social law’ for describing the role of the law in modern societies and asserts that “[t]he passage from classical law to social law should, then, be analyzed as the passage ‘from the Law to the norm’.” Another perspective discloses how law has become an important tenet in the deployment of the disciplinary power. For instance, Victor Tardos points at the role of law in regulating and legitimating the operations of discipline, and therefore in the constitution of (rather than externally imposing interdictions on) the modern subject (Tardos, 1998).

Finally, Golder and Fitzpatrick, in their turn, depart from both these camps, and propose to think of law in its “productive *irresolution* between a present determinacy and an illimitable responsiveness to what lies beyond it” (Golder and Fitzpatrick, 2010; p. 56). In other words, they are in partial agreement with the compatibility thesis in that law is constitutive of power relations. However, they diverge from this thesis by highlighting law’s relationality and responsiveness to resistance and transgression; assert further that law is an “uncontainable response to that which exceeds its own horizons.

Rather than insisting on the theoretical divide between the law and the norm, or between law and bio-politics, and trying to identify the exact relationship between them; I propose to look at the way in which the law functions, or more precisely, the way in which power operates through the functioning of the law, by analysing the 1983 abortion article in the Turkish law. In so doing, I will follow a path similar to Golder and Fitzpatrick, but I will remain more –in their own terms- in the ‘applied’ field rather than in that of the ‘exegesis’. Here, Nikolas Rose and Mariana Valverde’s insistence that “*there is no such thing as ‘The Law’*”. Law, as a

unified phenomenon governed by certain general principles is a fiction” (Rose and Valverde, 1998, p. 545) will be utterly valuable to me. In addition, I shall try to keep up with their suggestion to analyse the legal complex from the perspective of ‘government of conducts’.

My suggestion is to think of law as an area of governance, and by this, I mean two things. In response to the theoretical debate sketched out above, I argue that law works in all three modalities of power which together form the triangle of governmentality, namely, sovereignty-discipline-bio-power. In the first place, by setting exact limitations over the termination of pregnancy and criminal sanctions for cases of transgression, the abortion article clearly serves to enact the sovereign claim over women’s bodies and reproductive capacities. In the second place, the time limit it establishes reveals the overt ambition for setting up the norm regarding the regulation of abortion. Lastly, taking into account the fact that the most powerful argument for the legalisation of abortion was the intention to prevent mother and infant deaths resulting from unsafe abortions, the rationality backing the article no. 2827 is that of optimization of the population’s (reproductive) capacities, rather than that of imposing a particular moral stance on abortion.

However, I suggest that here is also an analytical potential that this term comprises, in addition to the rather descriptive aspect I sketched out above. Even if all three modalities of power are involved in the rationality of the law, none of them is pursued to its limit in the functioning of the law. While both sovereign and disciplinary claims are evident here, neither the sovereign control is absolute nor is the norm ever completely established through the law. Nor is this state of affairs able to produce the optimal bio-political outcome at the population level.

The starkness of the ban and sanctions are reduced by the fact that it is unlikely for someone (for the woman having an extra-legal abortion as well as for those who assist her in the process) to be indicted for violating the items in this particular article. Indeed, it is hard to detect illegal abortions so far as the pregnant woman consents to it, or does not get severe physical damage; except when, in other words, the woman herself brings the suit. Furthermore, legal authorities are apparently not very vehement about the prosecution. While in Turkey, where there is not a central legal system, it is impossible to know exactly whether one particular item of the penal code has *ever* been applied. I was unable to find such a case during my research, and my informants (doctors, lawyers and medical chamber workers), all asserted that with regard to abortion, the only legal prosecutions were being made on the grounds of malpractice.

At the same time, studies show that public perceptions on abortion are far more tolerant than the limitations that the article no. 2827 asserts (Gürsoy, 1996; Shorter and Angin, 1996). If abortion providers working in the public sector are unwilling to transgress the limitations, it is more due to their working conditions than their faith in the medical-scientific validity of the limitations in question. The stake here is then, neither the immediate production of docile bodies nor explicit acts of resistance; but, as I will try to delineate in the following chapters, a “...struggle between competing strategies of regulation [which] unfolds differentially for different groups of women” (Smart, 1992, pp. 29-30).

Given that all three modalities of power operate in an incomplete manner, does it all mean that, in the final stance, law *fails*? I argue that it certainly does not. To quote Michel Foucault’s analogy between France’s legal system and Tinguely’s constructions, a legal system is “...one of those immense pieces of machinery, full of

impossible cog-wheels, belts which turn nothing and wry gear-systems: all these things which ‘don’t work’ and ultimately serve to make the thing ‘work’” (Gordon, 1980). In other words, even if the law does not strictly determine the behaviour of individuals and populations, it nonetheless organizes, in accordance with the logic of governmentality, the *disposition of things*. To be more precise, the law (not being itself a monolithic entity, but an area of contest between different forms and loci of power) opens up a space, a field of action for people; it functions not in order to determine the actions of each and every individual, but in order to define the fault lines of their field of action: “To govern, in this sense, is to structure the possible field of action of others” (Foucault, 1983, p. 790). To sum up, law is an instance through which the conduct of people is ‘conducted’, regulated with respect to structural forms of dominance (*make the ‘thing’ work*), rather than their immediate and complete imposition.

While this argument partially supports Golder and Fitzpatrick’s claim that “[the] law is susceptible to instrumentalization by seemingly preponderant powers and yet at the same time holds itself ever open to unthought possibilities” (Golder and Fitzpatrick, 2010, p.85), I hesitate to share their optimism regarding the “uncontainable” aspect of law. In effect, law’s power to govern seems more uncontainable than its capacity to transcend itself.

Conclusion

The theories of law and of the state are relevant not in order to understand what law and state *are*, for their own sake, but in order to be able to understand the way in which they ‘work’, the way in which they (differentially) affect the lives of

(different) groups of people. In this chapter, I laid out the inadequacy of a “politics of population” framework based on the assumption of the existence of an autonomous ‘state’ that imposes its will over the population in order to achieve the ends it pursues.

This does not come to mean, however, that we cannot talk about politics of population. As many scholars note, this is a very prominent issue in the history of modernity (Foucault, 2006 [1991], 2007; Akşit 2010). Furthermore, law is indeed an important tool in the deployment of the politics of population.

Then again, turning to the ‘state’s agency, defined in terms of ‘its’ will, in order to understand the politics of population is analytically a poor enterprise. In this chapter, focusing on the 1983 law which legalized abortion upon request in Turkey, I sought to show that while the ‘state effect’ has been achieved through the interplay of various actors, the outcome of this was rather contingent upon a number of structural and conjunctural factors. For instance, while the lobbying efforts by public health experts, and the existence of a military government which was able to pass laws without concern for popular support, were important in the legalization process; the content of the article owes its relative narrowness (e.g. the requirement of spousal consent) to the larger social structures (of gender). Law, here, is not an instrument for imposing the state’s will, but an area within which this interplay has taken place.

Then again, the story did not come to an end when the article no. 2827 has been passed. As I noted at the beginning, the translation of the written law into everyday practice is not a smooth, one-to-one process. Moreover, the same article can give rise to diverse applications, depending upon a number of factors. In the following chapter, I shall consider the uses of the 1983 article in contemporary

Turkey in an attempt to delineate how this translation occurs, and under which influences the practical outcomes of written state documents are shaped.

CHAPTER 3

ABORTION WITHIN THE CHANGING HEALTHCARE POLICIES

On the February 19, 2011, a panel on abortion, organised by the Istanbul Medical Chamber (*İstanbul Tabip Odası* - ITO), was held. Among the participants were the spokesperson of the ITO's Women's Commission, a faculty member of the department of forensic medicine in the University of Istanbul, an obstetrician and one of the ITO's lawyers. Among the audience were a retired GP who previously had been working in a centre for mother and child health and family planning (Ana Çocuk Sağlığı ve Aile Planlaması Merkezleri - AÇS/AP), a public health planner, a retired doctor who had had an academic interest in abortion, a journalist who had prepared a sensational report on abortion the previous year, and a member of a feminist organisation who had been conducting research on this topic.

After the presentations, a discussion was held; all the people I mentioned above took the floor and a very lively debate ensued. Everyone agreed that things were going wrong at the level of practice, but interestingly, despite the high profile of expertise, nobody seemed to know *what* exactly was going on: everyone had their own records to share, heard some anecdotes, read certain articles and news reports, even statistics; but the entire picture was impossible to be grasped – there was missing information, contradictory evidence, and of course, opposing opinions and arguments.

This chapter is an attempt to lay out this entire picture. The impossibility of this enterprise will, no doubt, curtail its accuracy and my account, inevitably, will remain limited. However, delineating the causes of this impossibility will itself, I hope, explain much about the 'reality of abortion' in Turkey circa 2010.

Tracks that Lead to Nowhere

“...the pattern of the consent forms that will be required from those who apply for sterilisation or abortion and the way in which they should be filled, the places where these operations will take place, the health and other conditions that those places must provide and the issues concerning the regulation and control of those places will be indicated in a related statute that will be issued,”²² reads the 5th item of the article no. 2827, “the Law Concerning Population Planning”, which passed in May 1983. The respective statute was issued in the following December.²³ The latter indicates that gynaecologists are entitled to perform abortions in the places where they practice their profession, certified general practitioners (GPs), through the method of MR (menstrual regulation), in public healthcare institutions and under the supervision of a gynaecologist. In addition, it is stated that in cases where anaesthesia is necessary, the operation can be performed only in public institutions and private hospitals where anaesthesia can be provided (Resmi Gazete, 1983e).

Actually, in public institutions, gynaecologists do not perform abortions:

“...They can perform any kind of abortion within the legal limits. But they get GPs to perform abortions in public mother and child healthcare centres. I mean, specialists do not make injections either. They are entitled to do, but no specialist would do injections to patients. They have nurses do it... Specialists do not do all the things

²² “...sterilizasyon ve rahim tahliyesini kabul edenlerden istenilecek izin belgesinin şekli ve doldurulma esasları, bunların yapılacağı yerler, bu yerlerde bulunması gereken sağlık ve diğer koşullar ve bu yerlerin denetimi ve gözetimi ile ilgili hususlar çıkarılacak tüzükte belirtilir.”

²³ Today, these two are still valid with few small changes. During the rest of this work, all of the documents that I will refer to will be the most recent, therefore the valid ones, if I do not specify otherwise.

that they are entitled to do, they leave that which they can leave to their inferiors,”²⁴ explained a retired doctor to me.

As I stated in the previous chapter, one of the important aspects in the 1983 law was that GPs were being given the entitlement to perform abortions, with the condition of having pursued the special training programs provided by the Ministry of Health²⁵. The only method that they are allowed to use is Menstrual Regulation (MR) by vacuum aspiration²⁶, which “...is generally performed as an outpatient procedure, without anaesthesia, using relatively simple and inexpensive equipment” (Laufe, 1977; p.253); and only under surveillance of a specialist. Then again, as to the places where these operations will be performed, “The Code of Regulation of the Services of Population Planning”, published in the Official Gazette on 09.10.1983, states that “Population Planning Clinics will be established in the public hospitals designated by the Ministry of Health,” where the personnel will include one gynaecologist and at least two GPs (Resmi Gazete, 1983b). In addition to that, the establishment of “Dispensaries for Family Planning / Mother and Child’s Health”

²⁴ “Onların zaten her türlü kürtajı uygulama hakları var yasal çerçeve içinde kaldığı sürece. Ama onlar, ana çocuk sağlığı merkezlerinde yapılan kürtajı pratisyen hekimlere yaptırıyorlar. Hani doktor enjeksiyon da yapmaz. Doktorun enjeksiyon yapma yetkisi vardır ama hiçbir zaman hastaların iğnelerini uzman doktor yapmaz. Hemşirelere yaptırırlar. Ama uzman hekimler yapma yetkileri olan her şeyi yapmazlar; bırakabildiklerini bir alt kademeye bırakırlar.” Personal interview with Muhtar Çokar, 22.10.2010.

²⁵ General practitioners are graduates of medical school who do not acquire further specialization. In actual fact, not all the doctors working in public hospitals’ family planning units are certified GPs, there are also family doctors. Family doctors receive an additional three years of training upon their graduation from the medical school, and they are eligible to fill any post. Throughout this thesis, I will mention all the family planning doctors as GPs, in order to prevent confusion of these expert family doctors with the non-expert GPs passing as family doctors according to the newly adopted “family medicine system”. According to this new system, all the graduates from the medical school are entitled to work as family doctors in the newly established “Family Health Centres”, without receiving any further formation.

²⁶ “...the doctor inserts a tube into the uterus through the cervix and by exerting pressure at one end of the IUD (intra-uterine device), yanks the lining of the uterus. The breaking of the uterine wall results in menstruation. The surgical method involves the use of hand vacuum syringe and flexible cannula. The surgical procedure is very brief and lasts only a few minutes and does not require administration of general anaesthesia.” Downloaded from <http://www.targetwoman.com/articles/menstrual-regulation.html> on March 03, 2011.

(*Aile Planlaması / Ana-Çocuk Sağlığı Dispanserleri*) was stated within that Code as well; but it is only later that those latter have been renamed as “Centres for Mother and Child’s Health / Family Planning” (*Ana-Çocuk Sağlığı ve Aile Planlaması Merkezleri - AÇS/APs*) and that the services provided have been extended so as to include the provision of abortions, in case a gynaecologist works in there.

Here we are touching upon a critical point: as one might have noticed, thus far, the specifications that I have discussed are all about in which public institutions abortion *can* be provided; but there has not been a word about in which ones it *will* be. To be more precise, the minimum requirements for public healthcare institutions to perform abortions are indicated, but which ones will be held responsible for maintaining these remains unspecified. Apparently, what has come to the forefront, during the constitution of the legal framework of abortion, was the perfectly legitimate concern about the prevention of unsafe abortions – which is not surprising at all keeping in mind that the most frequently cited argument of the pro-legalization camp was exactly that. But the equally vital question of where women were to be offered safe abortion services free of charge -equally vital because it was precisely this service, which was, by practically complementing the former point, going to bring to an end to women’s deaths due to unsafe abortions- was not addressed in an equally determined manner.

As mentioned in the introductory chapter, while planning this research, I was very influenced by the news report published in the daily newspaper *Birgün* in April 2009, which claimed that among 15 public hospitals in Istanbul, seven did not practice abortion upon request at all. At that time, I was not aware that not all, but only those hospitals which contain a family planning clinic are to perform abortions. Opportunely, my first research trip was to a hospital which indeed contained one, but

which did not provide this service. In this clinic, one expert nurse and two trainees were employed. Their main tasks were basically to insert IUDs, distribute condoms and pills, make injections of contraceptives and provide consultation regarding contraception: “All the services except abortion are working out without deficiency.” When I asked the nurse why it was the case, she answered:

Formerly, we had doctors here, and we performed [abortions upon request] routinely... If it fitted the legal procedure, we would receive the patient, make the necessary examinations, give her an appointment and then perform the operation and let her go. But now because of the lack of doctors, we can't [...] Normally, there used to be a team here, one of them has retired, the other three left through reassignment when we moved here. This place was far away to their homes, so they asked for reassignment and they left [...] Since then, no other practitioner has arrived.²⁷

The logic backing this explanation might be absurdly simple - or perhaps, simply absurd, but it is an unquestionably exact one as well. No practitioners, no abortion upon request. And nobody knows who to hold accountable – and nobody seems to care either. Everybody brings the pieces of this puzzle (“Why aren't other practitioners being assigned to this hospital?”) in her or his own way and explains the situation accordingly -as I myself am going to do in the remaining part of this study. However, although the situation is found annoying, it is certainly not considered as an extraordinary one: true, population planning clinics with at least one specialist and two GPs *do* perform abortions; but who says that this particular clinic *should* be one of them?

²⁷ “Eskiden şöyle, doktorumuz vardı, rutin de yapıyorduk zaten... İşte o yasal prosedüre uygunsa hastayı kabul edip, gerekli tetkiklerini falan yapıp, randevusunu yapıp, ondan sonra da kürtaj işlemini gerçekleştirip çıkarıyorduk hastayı. Ama şimdi hekim yokluğundan dolayı yapamıyoruz. [...] Normalde burada bir ekip vardı, biri emekli oldu, üçü de tayinle gitti biz buraya taşınınca. Oturdıkları yerlere uzak düştü burası, tayin istediler ve gittiler. Bizim burada üç hekim vardı, tayin yoluyla gittiler [...] Ondan sonra da bir daha hekim gelmedi.” Interview with a nurse.

Apparently, no one. As mentioned earlier, the Code of Regulation states that the clinics qualified for the provision of abortions upon request will be designated by the Ministry of Health, but the criteria for their designation, like the ones for the designation of qualified AÇS/APs, are suspiciously absent throughout the conglomerate of codes, statuses, and ministerial notices. The informed opinion on the issue is that the Ministry of Health has to plan it according to its own “Elementary Code of Organization”; but such a document is actually non-existent. There is one particular “Statutory Decree Concerning the Organization and the Duties of the Ministry of Health” (Resmi Gazete, 1983d); which, far from specifying the exact principles of establishment of qualified institutions, contains only very rough statements:

- a) Identifying the goals of mother and child’s health and family planning services, preparing and operationalizing plans and programs according to these goals;
- b) Ensuring the protection of the bodily and mental health of mother and child, and nursing for married women in pre- and post-delivery periods;
- c) Executing similar duties ordered by the Ministry.²⁸

To this may be added the 2nd item of the article no.15 of the “Code for the Education, Duties, Authorizations and Responsibilities of the Personnel Executing the Population Planning Services”, entitled “Deployment”: “Provincial Health Director prioritizes the allotment of the personnel trained and certificated in population planning to places where population planning is performed”²⁹ (Resmi

²⁸. “Ana Çocuk Sağlığı ve Aile Planlaması Genel Müdürlüğü’nün görevleri şunlardır: a) Ana Çocuk Sağlığı ve aile planlaması ile ilgili hedefleri belirlemek, bu hedefler doğrultusunda çalışma plan ve programları hazırlamak ve uygulamaya koymak; b) Annenin ve çocuğun beden ve ruh sağlığının korunmasını ve evli kadınların doğum öncesi ve sonrası bakımlarını sağlamak; c) Bakanlıkça verilen benzer görevleri yapmak.”

²⁹ “İl Sağlık Müdürü, nüfus planlaması hizmetlerinin yürütüldüğü yerlere bu konuda eğitim görmüş ve yeterlik belgesi verilmiş personelin atanmasına öncelik verir.”

Gazete, 1983c). Again, we can find no clues as to the principles on which the allotments are being made, such as the exact number of clinics or other institutions *have to* be made available for a given population, and the exact number of trained and certificated personnel that *have to be allotted* to these places.

Having been unable to find any such document, I tried to get some information from the Ministry of Health's information department. After having talked with half a dozen people who had no idea about whom I should speak to, I finally reached somebody who knew about the procedures of information retrieval. He told me that the kind of information I was looking for was practically inaccessible via the information department, even by writing a petition. So I contacted a parliament member, Gaye Erbatur.

Gaye is a feminist woman and she is sensitive on the topic of abortion: upon the *Birgün* article mentioned above, she enacted a motion in parliament in 2009, whereby she did not only bring the topic into an official plane, but also very suggestively asked for measures to improve the situation. Although her concerns concentrate more on the obstacles that, in the newspaper article, single women were said to be facing; the response from the Ministry of Health includes more than this - but rather in a superficial manner: after explaining the frame of the law article no. 2827, it offers a detailed list of the family planning services (including the termination of pregnancies until the 8th week) offered by the AÇS/APs, and then states only that "public hospitals too provide family planning services," without specifying which hospitals offer which services, although one paragraph later, it affirms that many public hospitals cannot provide these services because of the absence of appropriate units.

As this document was of little help to answer my questions, I asked Gaye to enact another motion, with very specific questions about the organization of the provision of family planning services, especially of abortion. She did - at the beginning of the March 2011. No answer had arrived as to the month of June, when this thesis was submitted.

Das and Poole (2004), further Scott's (1985) insight that one of the modern state's major concerns is to render its subjects legible to itself. They argue that the illegibility of the state's own rules is a response to the illegibility of its citizens, a necessary tool for handling their illegibility. As I will try to demonstrate below, issues relating to fertility have an aspect of illegibility which cannot be fully overcome by technology despite the advances like ultrasound devices and DNA testing. The control over this area can henceforth be realized not through simply rational, precise and clear rules and regulations, but only through an illegible, opaque, and mostly arbitrary and contingent organization of things.

To put it in concrete terms: whereas the limits (not only the time limit or consent requests, but also those restrictions as to who can perform abortions and where) upon the induced abortion are set in very precise terms, a particular bureaucratic unit's (such as the government, the Ministry of Health, the Public Planning Organization...) responsibilities are never made that clear. In trying to track the principles upon which bureaucratic decisions for allotments are being made, one gets lost among the profusion of codes, decrees, statutes and communiqués, without ever being able to get the accurate information; an illegibility which curtails (if does not sweep away entirely) the accountability of state bureaucracies.

Das' account of the illegibility of the state does not contradict, but complements the concept of "law as area of governance" that I offered in the

previous chapter. According to Das, law, as a written document, creates the appearance of a rational-bureaucratic order on the one hand while giving way to a variety of ostensibly legitimate interpretations on the other. We should not therefore think of the state “...as an order-generating mechanism that either succeeds or fails in its charge, but rather as a highly fragmented and contested conglomeration of individuals and institutions” (Toag, 2010; p. 7). Hence, in this case, what we have at hand is not a deficiency at the level of planning, but the very mechanism which produces the state effect.

Following these theoretical insights, I propose the concept of “institutional improvisation” in order to think of the space opened up by state laws and related documents, which allow a certain margin of flexibility to each individual institution. This margin, in effect, may sometimes be quite broad; and consequential in its effects for those who are dependent upon the services provided by these institutions.

Improvising upon the Law

In the following section, I will draw upon the interviews I conducted in public hospitals in Istanbul between November 2010 and March 2011. As I have tried to make clear in the previous section, there was no way for me to know exactly which hospitals did contain family planning units and which ones did not, which ones provided abortions and which ones did not. So in selecting the hospitals to visit, I rather pursued the path indicated by the *Birgün* article, but have broaden it by including some hospitals which were not mentioned there, through a method similar to snowball: I excluded all the university hospitals, which offer third level healthcare services; and all the obstetrics hospitals, which offer rather therapeutic treatment; and

went to the hospitals which my informants advised me to go. In some of them, there were no family planning units, contrary to the information provided by the *Birgün* article or by my informants.

I excluded the AÇS/APs from this research as well, since currently, in Istanbul, there are no AÇS/APs where abortion is performed: Nazmi Algan, who has been working in the Okmeydanı AÇS/AP for 19 years, reports that until last year, there were two AÇS/APs in Istanbul where abortion was provided: in 2010, the one where he worked was closed, and the gynaecologist working in the other one was retired³⁰.

In total, I have been able to conduct interviews in eight hospitals with family planning units, providing abortion or not. In my visits to the hospitals, I saw that the diversification at the level of practice took place mainly around two issues: the time limit and the spousal consent. Let me now focus on this diversification, building upon my interviews and my observations in state hospitals.

Getting There on Time

As previously noted, the time limit indicated by the “Law Concerning Population Planning” is the tenth week of pregnancy, and the related statute establishes that gynaecologists are entitled to provide abortion in the places where they practice their profession, and certified GPs, through the method of MR (menstrual regulation), in public healthcare institutions. In addition to these two documents, there is a separate “Regulation for the Centres for Mother and Child’s Health / Family Planning”³¹, which specifies that in those centres, which count as first-level healthcare services,

³⁰ Personal interview with Nazmi Algan, 19.01.2011.

³¹ *Ana Çocuk Sağlığı ve Aile Planlaması Merkezleri Yönetmeliği*, published in the Official Gazette on 06.02.1997, Number of publication: 22900; part III, article 16.

this limit is reduced to eight weeks. The logic here is quite simple: said centres do not contain the necessary equipment for emergency action, in case of possible complications that might ensue an abortive intervention.

However, none among the family planning units in the hospitals that I visited adhered to this regulation. Rather, the time limits they considered varied between 6 to 10 weeks, according to each institution's improvised criteria, as the following interview illustrates:

- Until when is abortion upon request performed?
- The legal limit is ten weeks.
- The legal limit is ten weeks, but do you perform until ten weeks?
- No. Seven weeks, seven weeks and two days... Because we perform under polyclinical conditions, without anaesthesia.
- Isn't the limit eight weeks for operations without anaesthesia?
- We generally don't perform it under polyclinical conditions. Until seven weeks, maybe seven weeks and a few days at most, because of the high risk of haemorrhage.³²

As this interview excerpt shows, there is a confusion with regard to which regulations govern which health service unit. For instance, another interviewee related to me that they used to perform abortion upon request until the tenth week, but that they received a circular a few years ago which recommended them to reduce the limit to the eighth week. However, there is no such circular in the Ministry of Health archives; so my respondent can only have (mis)taken the Regulation for the Centres for Mother and Child's Health / Family Planning for a regulation that concerns her own practice.

³² “- Bu hastanede isteğe bağlı kürtaj kaçınıcı haftaya kadar uygulanıyor?
- On haftaya kadar yasal süre.
- Yasal süre on haftaya kadar, peki siz onuncu haftaya kadar uyguluyor musunuz?
- Yok. Yedi hafta, yedi hafta iki gün. Poliklinik şartlarda anestezi uygulanmadan yapılıyor.
- Sekiz haftaya kadar değil mi anestezi uygulamanın süresi?
- Poliklinik şartlarında pek o kadar yapamıyoruz. Maksimum yedi hafta, belki yedi hafta 3-4 gün. Kanama riski biraz fazla olduğu için.” Interview with a GP.

In another hospital, the performance of abortion upon request was completely stopped after the polyclinics, including the family planning unit, had recently been relocated to a separate building, 500 metres away from the main hospital. There, I was told that they were now considered as a first-level healthcare service unit, and could no longer perform abortions. While one would assume that if this were indeed the case, they should then follow the Regulation for the Centres for Mother and Child's Health / Family Planning (which are *officially* first-level healthcare service units) and perform abortions until the eighth week, their interpretation (slightly) differs from this reasoning.

In addition, the explanations offered by the hospital personnel are in conflict with commonly accepted views on abortion. Abortion, in their accounts, is a high-risk operation, with the risks increasing daily as the pregnancy progresses:

In fact we don't use anaesthesia, and since we perform without putting [the woman] to sleep, the more advanced weeks create problems for us. Because the process lengthens. As the pregnancy advances, the risks increase for us... We try not to exceed eight weeks... It's completely a technical matter.³³

No, we cannot perform [abortion] here. People generally think that abortion is a simple operation, but actually, it is not. It has many risks. Risks of complications. So it can be performed only in fully-fledged hospitals.³⁴

Now compare these statements to Ayşe Akın's account, who, in addition to having contributed to designing of the certificate program for the MR method, has herself been performing abortions throughout the last forty years:

³³ "Biz tabii anestezişiz yapıyoruz, uyutmadan yaptığımız için, biraz da büyük haftalar bizim için sıkıntı oluyor. Çünkü işlem uzuyor. Haftası büyüdükçe riski artar bizim için... Sekiz haftayı geçirmiyoruz... Bu tamamen teknik bir mesele." Interview with a GP.

³⁴ "Hayır, burada yapamıyoruz. İnsanlar kürtajı hep basit bir işlem gibi düşünüyorlar da, değil. Riskleri var. Komplikasyon riski var. Ancak hastane de yapılabilir." Interview with a GP.

...The first 12 weeks, we call it ‘the first trimester’; you divide the pregnancy into three periods. The complications that might occur during the first trimester are roughly the same. One week earlier or later. But when the second trimester begins, it becomes bad immediately. The results [of a termination] can turn out to be bad.³⁵

As a matter of fact, one might think that so far as women are legal bearers of the right to abort, a couple of days or weeks might not make a big difference, that eight weeks (or even six weeks) is already a long time period, and that women should be able to abort within this period if they are determined to do so. But in fact, real life situations rarely match this ideal pattern. Muhtar Çokar, a doctor who is currently working in the reproductive health area, relates:

One reason why women do not widely have access to abortion upon request is that this service is not offered after 8 weeks [in public institutions]. Because, a crucial point, the way legal experts and health experts calculate the term of pregnancy is different, there emerges a difference of 15 days. According to the way health experts calculate it, a woman finds out that she’s pregnant in the fifth or sixth week of pregnancy, realizes that her period falls behind, asks herself what is going on... the fifth week is up, she understands that she is pregnant on the sixth week, if she ever can do. At that point, she has two weeks to go to a centre to terminate her pregnancy. If she manages to find one, she achieves [to get an abortion], if she does not, she just carries it through.³⁶

As I have tried to demonstrate in the previous chapter, the legal time limitations upon abortion are themselves arbitrarily decided rather than being medically justified; and the Turkish case constitutes a typical example in this regard. At the same time, it is

³⁵ “12 hafta, çünkü “birinci trimestr” deriz biz; gebeliği üçe bölerseniz. Birinci trimestrde yaptığınız sonlandırmada karşılaştığınız komplikasyon üç aşağı beş yukarı aynıdır. Bir hafta önce, bir hafta sonra pek farketmez. Ama ikinci trimestr başlayınca, hemen kötü, yani sonuçları olumsuz olabilir.” Personal interview, 06.01.2011.

³⁶ “8 haftadan sonra oralarda bu hizmetin yapılmaması, kadınların yaygın olarak isteyerek düşüğe ulaşmamalarının bir nedeni. Çünkü şey çok önemli; hukukçuların gebelik süresini saptamasıyla sağlıkçıların saptaması arasında 15 günlük bir fark var. Kadın zaten sağlıkçılara göre beşinci altıncı haftada falan farkına varıyor gebe olduğunun; yani işte bir hafta gecikti ne oluyor ne bitiyor derken... beşinci hafta bitiyor; altıncı haftada gebe olduğunu anladıysa anlıyor; altıncı haftada iki buçuk haftalık bir süresi var Ana-Çocuk Sağlığı’nda gebeliği sonlandırmak için. Orada başardı başardı, başaramadı kalıyor.” Personal interview, 22.10.2010.

not the case that women can fully benefit from this (already) limited right accorded to them: each individual institution adds its own arbitrary constraints upon the already existing restrictions. We can remark that, with respect to abortion, the legality is defined in terms of staying definitively within particular limits, not of women's fully enjoying their rights within these limits.

You Shall Never Walk Alone (Even If You Want to)

As I have previously emphasised, the spousal consent was deemed mandatory by the “Law Concerning Population Planning,” an issue much debated since then. I will discuss the social aspects of this point in the following chapter, along with its theoretical implications and social consequences. For the moment, however, I will just sketch out the way in which the issue is being dealt with in public institutions today.

Remember what Ayşe Akın said about spousal consent: that not the physical presence, but only the signature of the pregnant woman's husband is required according to the law's article; which implies that woman-friendly health personnel can, just by ignoring a woman's fraudulence, that is to say, “passively,” help her about it – a point which is supported not only common knowledge, but also by other informants of mine before I started my visits to public hospitals. In addition, as mentioned in the previous chapter, the new Turkish Penal Code, passed in 2004, criminalizes not the performance of abortion without the spousal consent, but only its performance by non-experts or in inappropriate places. Therefore, some doctors and lawyers interpret this as an implicit removal of the restriction brought about by the 1983 article (Özcan, 2009).

I was therefore not really prepared for the reactions I encountered in those hospitals during my visits, like the quotation below illustrates:

We cannot let go of this spousal consent affair, it cannot possibly be forgotten. This rule is very strict, and we apply it in an increasingly strict manner. Since a couple of months. We started to ask for the copy of one's identity card. Formerly we used to just fill a registration file, now we attach the identity card's photocopy to it. Because court cases can be filed. The identity card may be faked, she may not bring us her real identity. We cannot know from where a problem can occur. We try to play it safe. In order to protect ourselves. We decided to add this in order to be able to prove that we have checked it out; whether she's married or not, the man is her husband or not... Because we can't know that either. We want the man to be present while signing the form. There are not any ongoing law suits about it, but some things recently happened. Things can happen.³⁷

I tried to get to understand what made this interviewee so concerned, to find out what was it that happened a few months ago that made her anxious about this issue.

During the interview, she framed the event as a legal one, as if somebody had brought forth a law suit against her (or against the hospital where she works), yet she did not refer to any specific case. After having turned the tape recorder off, I once again tried my chance, and asked her whether the legal proceeding she mentioned was still being carried on. She said there was no such court case against herself or her institution, but that she was afraid of being subject to one. When I asked her whether she personally knew anyone who had been charged for such an account, she just said "we always hear about it" (*hep duyuyoruz*), which, in Turkish, means that she has not

³⁷ "Mümkün değil o izin işini atlayamıyoruz, unutulması mümkün değil. Çok katı o kural, giderek de katlaşıyoruz. Birkaç aydır böyle. Artık nüfus cüzdanı fotokopisi falan almaya başladık. Eskiden sadece kayıt yapıyorduk, şimdi bir de onu ekliyoruz. Çünkü davalar açılıyor. TC kimliği aynı olmayabilir gerçek kimliğini getirmemiş olabilir bize.. bilemiyoruz ki nereden bir sorun çıkacağını... biz işi sağlama almaya çalışıyoruz, o yüzden yani. Kendimizi korumak adına. Hani ekleyelim dedik belgeleyebilmek için, evli mi bekar mı, gelen adamın doğru mu... onu da bilmiyoruz. Hani eşini de çağırıp imzalattığımız için. Yani sorunun nereden kaynaklanacağını biz de bilmiyoruz. Şu anda devam eden dava yok da, öyle bir şeyler oldu yakın zamanda. Olabiliyor." Interview with a GP.

heard anything but rumours. The rumours about the prosecution of practitioners performing abortions without demanding spousal consent was not limited to that particular institution, but appeared as a recurrent theme throughout the interviews I conducted. But actually, none of my informants had been sued against for this reason, neither did they personally know of any such concrete case. Yet, all claimed that such cases occurred frequently, both in the public and private sectors: they just “heard from here and there” (*oradan buradan duyuyoruz*).

Asking for a copy of both spouses’ identity cards is not unique to the above hospital, albeit it is not a general rule either. But the physical presence of the husband for the practice of abortion is requested by all the public institutions that I observed. Upon my insistence on the point, and my reminding of the fact that the new Turkish Penal Code does not state as crime the performance of abortion upon only the pregnant woman’s consent in case she is of age 18 or older and mentally stable, my informants in different institutions stated that they nonetheless asked for spousal presence “just in case” (*ne olur ne olmaz diye*). At long last, I have been able to understand what they meant by this “case”: they were simply afraid of being physically assaulted by an angry husband upon discovering that her wife has undergone abortion without his being aware of it.

This concern might sound astonishing at first. But it becomes less so when one takes into account that in Turkey, doctors and other medical personnel are being assaulted, injured and even killed by patients or more habitually, by patients’ relatives rather frequently. The Turkish Medical Association (*Türk Tabipler Birliği* – TTB) and local medical chambers consider these acts of violence as symptomatic for a structural problem rather than mere sporadic episodes: in their numerous press releases and articles, it is argued that the structural problems of the healthcare system

that lead to inefficiency at the level of treatment are being attributed to health workers' misconduct or wrong doing on the part of patients and their relatives.³⁸ At any rate, the ubiquitousness of such events makes it less puzzling that the GPs I interviewed feel the need to protect themselves. If the legal system is unable to protect them from such assaults, then they themselves must seek self-protection; either by interpreting the law from a more restrictive perspective and sticking to the word of the law in that respect, or through extra-legal measures by putting further constraints than those of the law itself on the performance of abortion upon (a woman's) request – such as asking for the photocopies of both spouses identity cards. The essentiality of (not only legal, but also physical) self-protection trumps woman-friendliness and noble beliefs about women's and patients' rights.³⁹

Therefore, similarly to the time limit, this limit is also applied based on an interpretation of law which gives weight to its repressive capacity, and not on a perspective of (women's) accomplished rights.

The erosion of this right figures in another respect as well. In the newspaper article mentioned above, Sevgim Denizaltı contends that a number of the hospitals where abortion is performed, its service is denied to single women. All of my informants claimed that this was not the case and that single women could have an abortion without facing any obstacles. However, their statements on the issue provoke suspicion about the ease with which single women can have abortions:

³⁸ For instance, see <http://www.istabip.org.tr/index.php/haber-arsivi/1821-hekimlere-ve-salk-calanlarna-yoenelik-iddete-syan-ediyoruz.html>

³⁹ Still, I shall argue that this attitude is possible only within a particular social and cultural atmosphere. The contrast between the two periods (80s and 90s as opposed to 2000s) with respect to the doctors' attitude (the doctor who prioritizes woman's choice and helping her vs. The one who is indifferent to the difficulties she is faced with) should not be considered as an individual matter: of course, what is at stake is the doctors' agency, but even this has to be thought of within structural limits. I shall return to this point in the following chapter.

If she hasn't any health problems and she's an adult, we try to undertake [the operation]. It is not the case that we turn down too many of them.⁴⁰

We want her to prove that she is single. For one thing, we look at the identity card. But there are so many of them who try to be cunning. The identity may not be her own, or she may bring her former identity....⁴¹

One cannot refrain from thinking that while not “too many of them”, some of them *are* turned down, and from wondering what happens if a woman who is actually single “looks” deceiving to the GPs. At any rate, even if the denial of the provision of abortions to single women is not a policy that is systematically applied, there is nothing to prevent it from being a sporadic occurrence under this regime of improvisation; and there is indeed no way to find out how frequently it occurs.

It is now time to take one further step and ask what the dynamics that shape the actual practices are, in the institutions which are bequeathed with the above described margin for institutional improvisation. To be more precise: Why are the health personnel in public institutions so reluctant to perform abortions? What impels those people to be less, and not more, eager to provide abortions? I shall suggest that neoliberal healthcare policies, and especially the healthcare reform program launched in 2004, provide an answer to this question, albeit a partial one.

⁴⁰ “Herhangi bir sağlık problemi de yoksa, 18 yaşın üstündeyse yapmaya çalışıyoruz yani. Çok hani gönderdiğimiz olmuyor.” Interview with a GP.

⁴¹ “Bekar olduğunu kanıtlamasını istiyoruz. Nüfus kağıdına bakıyoruz mesela. Ama o kadar uyanıklık etmeye çalışan oluyor ki... Kendi kimliği olmayabiliyor, eski kimliğini getirebiliyor...” Interview with a GP.

The Transformation in Health

Since the 1980s, it has become common sense that the healthcare system in Turkey was in need of a comprehensive restructuring. As a matter of fact, in Turkey, welfare system in general, and healthcare system in particular, have never been well established. The Turkish welfare regime was criticised for being corporatist and inequalitarian: on the one hand, based on the employment status of the beneficiary, this system was not only unable to cover those outside of the formal employment structure, but also created a hierarchy among those under coverage (Buğra and Keyder, 2005). Until the introduction of the Green Card Scheme in 1992, the system used to cover only the formally employed; and there existed three different schemes which differed enormously from one another in terms of premium payments, coverage, and the quality of services: the Retirement Fund (*Emekli Sandığı*) for civil servants, Social Insurance Institution (*Sosyal Sigortalar Kurumu - SSK*) for workers, and *Bağ-Kur* for the self-employed. The Green Card Scheme, which was established to provide for “the poor”, in its turn, addressed only the families whose per capita income was less than one third of the minimum wage, and was distributed through a means-test mechanism (Yoltar, 2007; Günal, 2008; p. 31). Even after the introduction of the Green Card scheme, the system remained fragmented and fell short of universal coverage: in a country like Turkey, where informal employment is widespread, a large part of the population, especially in the rural areas, was almost completely uncovered by this system (Güenal, 2008). Furthermore, since the coverage was based on the payments of premiums, even those who were able to get involved in the system had not guaranteed access to healthcare services and could easily fall outside of the security net by failing to regularly pay their premiums (Yoltar, 2007;

p. 46). In addition, the system is marked by serious gender inequality as well: the relatively low participation of women in the work force, especially in the formal sector, implied that the majority of women did not have direct access to healthcare, and could benefit from it only through their male relatives' (i.e. husbands or fathers) involvement in the social security system. Nazan Üstündağ and Çağrı Yoltar, in their ethnographic work on the healthcare system in Turkey, assert that this was a political choice, which helped to establish the nuclear family as a model to which the 'proper citizen' had to adhere (Üstündağ and Yoltar, 2007).

Asena Günal displays, in a detailed account, how the attempts at the socialization of healthcare services, which started in the 1960s, failed to establish a system on the basis of equality and inclusion of all citizens. Since "Turkey, as a dependent-capitalist geography integrated into the global process of globalization with its own dynamics since the sixteenth century on, has underwent transformations peculiar to itself yet parallel to Western modernity," the post-WWII period was marked by developmentalist policies, echoing the Western understanding of the welfare state (Özkazanç, 2005). However, the two decades of socialization program in healthcare services could only achieve the provision of primary healthcare services in the countryside, and not more: Günal (2008) counts "low coverage, the weakness of the primary care network, the unjust distribution of services and personnel, the inefficiency of hospitals, the resistance of doctors to becoming civil servants, the lack of integration, and the inequality of access to healthcare" (p. 390) among the problems of the system that persisted even after all the attempts at socialization of the healthcare.

The 1980s witnessed radical transformations through the so-called "neo-liberal turn", in Turkey as in other parts of the world, which impacted almost all

aspects of life, social policy being one of the most seriously affected areas. While neoliberalism is broadly defined as a “market-political rationality” which involves the shrinking of the state and the consequent end of its intervention into the functioning of the economy, paralleled by its withdrawal from the provision of certain social services (Harvey, 2005); in Turkey, it took the shape of a transition from the model of developmentalist, import substitution industrialization lead by the public sector, to an export-oriented economy which entailed the integration into the global market through structural readjustment programs and the uplifting of former market restrictions. This could only be realised through the violent military coup of September 12, which suppressed all possibilities of political resistance (Boratav, 2005). In effect, the coup was ensued by the process of neoliberalization that entailed the end of protectionism, a gradual decrease in public expenditures along with an active encouragement of the private sector, privatizations and the transfer of social services into the private sector, and ongoing marketization. For instance, with the 1982 constitution, prepared by the interim government, public hospitals were defined as revolving funds institutions (*döner sermaye kuruluşları*). In this manner, public institutions were assumed to seek profit as any other capitalist enterprise, since they were expected to generate sufficient income to keep functioning without recourse to state funding.

Although the welfare system in general, and healthcare system in particular, were far from being well-established even prior to that period; the logic of the social state nonetheless used to be dominant. In other words, although the system was marked by insufficiency, the state was nevertheless perceived as the provider of healthcare, and the attempts made were towards eliminating the existent deficiencies. With the new constitution, however, the role of the state was redefined as

“regulatory” (in contrast to the “social state”), and the neoliberal restructuring was institutionalized (BSB; 2008; p. 222). Since then, public expenditures have been relentlessly questioned, whereby the need for further privatization and budget cuts has consistently been implied – despite the fact that public social expenditure in healthcare remained very low in Turkey throughout its history (Acar, 2009; p. 55).

With this shift in mentalities, the problems in the healthcare system mentioned above did not only become more salient, but the quality of the services declined significantly throughout the 1980s and 1990s. The rapid growth of the urban population put likewise increasing demand on the public hospitals, while their share from the state budget gradually declined. As a result, state hospitals were not only over-crowded, but the quality of the services they offered also gradually decreased. The reforms that the governments sought to implement throughout this period, supported by the World Bank, which endorsed market mechanisms and competition with the private sector as a panacea to the structural problems of inefficiency in the healthcare system, were of little help in terms of alleviating this situation, and only lead to further decentralization and autonomization of public institutions (Günel, 2008).

To enact a radical reform program in healthcare was one of the foremost promises of the Justice and Development Party (*Adalet ve Kalkınma Partisi* –AKP) during the pre-election national campaigns in 2002, and the so-called “Transformation in Health Program” was launched during its first term of government (2002-2007). Albeit more comprehensive, the content of the program was similar to those initiated in the 1990s. What distinguished the AKP from its predecessors, however, was its determinacy to, and its subsequent success in, implementing the program (*ibid*, p. 394). Then again, while the declared goal of the

project was to achieve “effectiveness, efficiency, and equity in organization, delivery and financing of healthcare services” (Şahin et al, 2011; p. 20), the outcome seems to have turned out to be a further deterioration of the healthcare services (TTBEK, 2009; p. 12).

The AKP put the inegalitarianism of the structure at the heart of its criticisms against the existent healthcare system through a populist discourse, which effectively served to obscure their prevalent concerns for cost-containment. A first step of the reform program was the unification of the four different schemes under a single framework. According to the new arrangement, all beneficiaries would be covered by the newly founded General Health Insurance - an obligatory, premium-based health insurance system, envisioned to be universal. Although this new arrangement was advertised with great emphasis on equity, this discourse only served to conceal the further impediments it will create to the accessibility of healthcare services (cf. Günal, 2010). Consequently, the new Law on Social Security and General Health Insurance (*Sosyal Sigortalar ve Genel Sağlık Sigortası Yasası – SSGSS*), the second tenet of the Transformation in Health program, has been backed by considerable popular support and was passed despite heavy criticisms coming especially from medical associations and health workers’ unions. These latter’s emphasis mainly centred on the deteriorating working conditions for health workers and the problems that the reform will entail in the provision of services; although attention has also been drawn to the difficulties facing the healthcare service receivers as well, such as the additional fees and marginal payments (Yeğenoğlu and Coşar, 2009). Finally, the “family physician system” has been introduced as the new locus of primary healthcare, whereby the “Family Health Centres” are to replace the neighbourhood clinics. Actually, the neighbourhood clinics, which are currently

being closed, have been the principal and sometimes even the sole healthcare providers in poor and rural areas throughout Republican History and were of critical importance especially for women and the elderly (Üstündağ and Yoltar, 2007). In addition to these basic components, the Transformation in Health involves new regulations in various domains, such as the “Law of Full Day” which organises the working conditions of the doctors, and prevents the doctors working in the public institutions from working simultaneously in the private, which has been subject to a very heated debate.

Taken together, what these steps achieve best is the “marketization through autonomization” of the public healthcare services (Acar, 2009). Through decentralization, the public hospitals are expected to function according to market principles, in a self-contained manner and without support from the central budget. Although the designation of the public hospitals as revolving fund institutions dates back to 1982, the new premium-based scheme of payment called “assessment based on performance” (*performansa dayalı değerlendirme*), signals the deepening hold of market rationality in the public health sector (Resmi Gazete, 2006). In this new payment scheme, each operation that can be undertaken in a public hospital is assigned a performance score by the Ministry of Health, the so-called “score for interventional operations” (*girişimsel işlem puanı*) and health workers’ salaries are calculated according to the score they meet within a month.

Taking into account the redefinition of the Ministry of Health’s role not as healthcare service provider, but as the ‘coordinator and the supervisor of the health market’, it is inevitable that some services, however badly needed by the citizens, will become unavailable if they are found ‘unprofitable’. Furthermore, autonomization paves the way for privatization by authorizing both hiring through

sub-contracting and the sale of property and real-estate given to the use of the Ministry of Health (*ibid*, p. 53). In actual fact, with the practical transfer of a variety of healthcare services from the public to the private sector, the latter has expanded by 12 times since the implementation of the health reform program: the money transferred to private hospitals amounted to 500 million TLs in 2002, by 2010, it has reached 6 billion TLs; while the conditions in the former have been consistently deteriorating.

Above and beyond, the family physician system has been adopted nationwide despite its many deficiencies, which have been demonstrated in the pilot regions where the system has been tested.⁴² Leaving aside the infrastructural insufficiencies of this new system, such as lack of buildings or equipments, which nonetheless might be overcome through time; what this system incites is basically the privatization of the primary healthcare services to the detriment of the disadvantaged groups' access to healthcare. In addition, with the employment of all GPs as family doctors, many services, conventionally undertaken by the GPs will simply be unavailable in public hospitals.

The Transformation in the Family Planning

I now want to turn to the implications of the Transformation in Health program for the provision of abortion upon request in public hospitals.

Let us start with the first case that I mentioned in the first section of this chapter: the family planning unit which does not offer abortion services due to a lack

⁴² Among many articles in the TTB's and ITO's website, see especially "Aile Hekimliği: Görüş ve Öneriler" (Family Medicine: Opinions and Suggestions, November 2006) and "Aile Hekimliği Süreci Sancılı Başladı" (Family Medicine Process Started Painfully, March 2007).

of GPs. The main reason why no new GPs are allotted to hospitals is that with the new system of “family doctors”, all the GPs (recently graduated ones and those who apply for a re-allocation alike) are currently being allotted to the newly established “Family Health Centres”. As I hinted to in the previous section, this state of affairs does not only currently curtail the provision of certain services (and among them, that of abortion upon request), but also brings the implication that in the future (when all the GPs who are now working in public hospitals will have retired or been re-allotted), these services will be unavailable in all of the public hospitals. I should not go on without mentioning that the special training programs that GPs have to complete in order to be certified for performing family planning services, have not been offered by the Ministry of Health for quite a long time. In fact, all the GPs that I interviewed had completed the program more than fifteen years ago, and are currently looking forward to their retirement age.

So why do not the GPs currently working in the family planning units offer the service of abortion readily? One reason is certainly to be found in the new payment scheme mentioned above, which involves “assessment of performance”. For instance, in the interventional operations list of the year 2011, the removal of a cyst is scored 50 if it is smaller than 1 centimetre diameter, 100 if it is 1 to 5 centimetres, and 150 if it is larger than 5 centimetres; circumcision is scored 114; a kidney transplantation 2,000 (Girişimsel İşlemler Listesi, 2011). The apparent meticulousness of these measurements in the astonishingly long list of medical operations cannot prevent the scores attributed to them from being utterly arbitrary (TTBEK, 2009). Notably, the performance score of abortion does not prefigure in any of the “interventional operations” lists; a further indication of its being completely disregarded within this system.

The criticisms of this scoring system (coming mainly from doctors and health experts associated with TTB and other medical chambers) focus mainly on two points. Firstly, the capitalist logic of profit which underlies this system is criticised: it is argued that assessing a health worker's accomplishment with recourse to his or her "performance" is in conflict with the ethical dimension of medicine. And the institutionalization of this logic cannot but result in health workers' approach to their own work. Secondly, and relatedly, it is stated that creating this kind of a hierarchy among the health workers' activities will inevitably lead to deterioration in the quality of healthcare services. Unsurprisingly, the health personnel will become unwilling to carry out the activities which are underscored. However, a particular activity's being underscored does not make it less sought after by a patient suffering from a related disease or otherwise needing this service. Although it is a factual reality that some operations are more difficult than other ones, assigning arbitrary "scores" for each operation is not only ethically problematic, but it also will practically stop the provision of certain services.

The GPs in the hospitals I visited were having their premiums on the revolving fund system, that is to say, their performances were being rated and they were being paid accordingly. They all seemed to be well informed about the way in which their salaries were being calculated, but their statements contradicted each other. While some of them reported that this premium system affected their salaries very little, that their basal salary constituted much of their total salary so that the performance scores they received were not very crucial for them; the others contended that the premiums they received were substantial to their salaries. In both cases, performing abortions did not in any considerable way affect the wages they earned; either because their wages were predetermined or because the performance

score of abortion was insignificant. Those who reported that their wages relied on their scores maintained that, contrary to my findings, abortion was indeed rated as an interventional operation, but that its score was too low, even lower in comparison with other services they carried out – despite the fact that abortion was the most serious operation conducted in their units.

Apparently, the health personnel are not more capable of overcoming the illegibility of the state than I myself am; but at any rate, the current order of things gives them little incentive to perform abortions: while the system encourages the rational calculation of costs and benefits in terms of time, energy, and performance scores at the expense of the consideration of patients' rights to access to healthcare services, the health workers increasingly tend to undertake less complicated and less risky duties so far as they pay the same as more complex ones.

Let me add that, with regard to abortion the “risk” in question is that of incomplete termination rather than an actual threat to the woman's life. In other words, although the operation itself is not considered a complex one, the frequency of malpractice is high, and gets increasingly higher as the pregnancy advances.⁴³ Actually, the probability of malpractice is similar across different medical interventions, but it is suspiciously more talked about when it comes to abortion. It was not too hard to find out why. In Turkey, doctors are legally obliged to have a “doctors' professional responsibility insurance”. In case of a patient's health impairment or death due to a doctor's fault or neglect, this insurance is to pay the charges that the doctor is responsible for. However, abortion is not covered by this insurance. Therefore, whereas malpractice in other situations is, at least financially, negligible for the doctors, with regard to abortion, it becomes a serious issue. While

⁴³ Personal interview with Muhtar Çokar, 22.10.2010.

on the one hand, the benefit one is making from the performance of abortion is very low, and on the other hand, one risks of having to pay compensation out of one's own pocket in case of malpractice; the GP, as a rational actor would, undoubtedly, be reluctant to perform abortions.

As there is not a centralised legal system in Turkey, it is impossible to keep track of the suits brought concerning one particular law; i.e., there is not a definite way of finding out whether any doctor has *ever* been on trial for surpassing the spousal consent. I was unable to discover any such case, and one of the TTB's lawyers confirmed this non-finding, by claiming that the cases she encountered were all concerning malpractice, rather than in the purview of the Penal Code; and confirmed that malpractice was, at least in practice, the only legal risk that abortion involves.⁴⁴ The threat of the law, so often mentioned by the GPs working in public hospitals seems to be, at the end of the day, only an alleged reason for their reluctance. Actually the threat of physical violence, admitted by some of my interviewees, is felt more intensely by them; since its frequency (and thus, probability) is much higher, and is getting increasingly so with the recent developments in the healthcare system.⁴⁵

Conclusion

In this chapter, I have tried to show a particular way in which the health reform project launched by the AKP, bringing together a number of contingent factors, has

⁴⁴ Personal interview with Meriç Eyüboğlu, 28.03.2011.

⁴⁵ For a few recent examples: "Doktora Bıçaklı Saldırı," *Sabah*, May 08, 2011; and "Şiddete Maruz Kalan Hekim Şikayetçi Oldu," *Milliyet*, May 05, 2011. In addition, probably many such instances are not reported in the mainstream media; since at least three events that took place in the first months of 2011, reported in the TB's web page are not to be found in any of the mainstream newspapers.

lead abortion upon request to the become practically inaccessible in the public health sector. In addition to this account based on my field research, two important points that I have not yet dealt with need to be raised.

Firstly, the bifurcation between the public and the private health sectors, and the relative ease with which abortion can be ‘purchased’ in private clinics makes it hard to address the problem as an instance of erosion of women’s rights. The issue becomes a mere instance of the gap between the rich and the poor, which is widened by neoliberalism. However, this too is true only to a certain extent: the provision of abortion in the private sector is also becoming increasingly inaccessible, the only difference being that it takes place at a slower pace than in the public. During the panel organized by the ITO that I mentioned above, it was reported that a great many of the private clinics and hospitals refuse to offer the service on ‘religious’ grounds. On the other hand, after the passing of the “Law of Full Day”, a component of the reform package organising the working standards of doctors, many expert doctors, gynaecologists among them, have been transferred to the public sector, and the private clinics where they used to provide abortions have been closed.

This brings us to the second dimension, that of locality. As a matter of fact, historically, regional inequalities have always been the most serious shortcoming of the Turkish healthcare system. Rural areas, especially in Eastern Anatolia, could have only been provided with primary healthcare services, if they ever were (Günel, 2008). The data used in this study was collected Istanbul, the biggest city in Turkey, during the first months of the implementation of the family medicine system.⁴⁶ While this helped me to grasp the gradual transformation, the shift has been sharper in

⁴⁶ The system has been adopted on November, 2010 in Istanbul, later than in many parts of Turkey.

smaller cities and rural areas,⁴⁷ where access to abortion was already problematic. For instance, a feminist activist reports that in Van, a city populated by more than one million inhabitants, there is currently only one private clinic which provides abortions.⁴⁸

It is commonly acknowledged that neoliberalism deepens the already existing social inequalities. I shall suggest that it is important to track the ways in which this occurs, since what is at stake is not the mere implementation of certain economic policies and the subsequent destitution of those who are unable to live up to them. Neoliberalism is, above all, a political rationality which articulates with already existing power structures, and therefore leading to different outcomes in different contexts, affecting different groups of people in different ways. A rapid subsumption of different dynamics and power relationships under the general rubric of ‘neoliberalism’ thus risks of obscuring the ways in which this articulation occurs.

I have focussed on policy issues in this chapter, but I also suggested that the particular outcome of the implementation of a healthcare program could not have been immediately deduced from the written texts of policy. While policy “became an increasingly central organizing principle in contemporary society, shaping the way we live, act and think,” (Shore and Wright, 1997; p. 3), the form this organization takes is contingent upon a number of other dynamics, which need to be scrutinized. In this specific case, the abortion law which passed in 1983 constitutes the background against which the new healthcare policy came to play out a new arrangement. Then again, can we assert that neoliberalism *per se* accounts for the entire story? Why did the neoliberalization of healthcare lead to the inaccessibility of

⁴⁷ Personal interview with Muhtar Çokar, 22.10.2010.

⁴⁸ Gülsun Kanat Dinç, panel speech delivered on the 19th February, 2011.

abortion rather than vice versa, for instance, rather than its becoming increasingly marketable and thus more readily available? In order to be able to answer this question, in the next chapter, I will take a broader look at the contemporary political atmosphere in Turkey.

CHAPTER 4

WOMEN IN THE FACE OF NEOLIBERAL NEOCONSERVATISM

We, the participants of the International Family Conference on the topic “Family as a Value in the Context of Religion, Tradition and Modernity”, held in Turkey, Antalya on 26-27 November 2010, where academicians, activists and NGOs from 50 countries were represented;

- believe that the natural family structure, which is required for the new generations of all nations to grow up healthy, productive and warm-hearted, is based upon marriage between one man and one woman.

- support the proliferation of children coming from natural marriages, keeping in mind that all nations need young populations.

(...)

- support the policies and projects which prevent abortions and help the (otherwise decreasing) birth rates to increase.⁴⁹

(...)

The conference in question, from the concluding declaration of which the quotation above is taken, was actually not a government-sponsored event,⁵⁰ but many state officials, among them the Minister of Women’s and Family Affairs, Aliye Kavaf⁵¹ participated in it. Kavaf’s participation in the conference angered not only feminists and gay rights activists, but also a larger part of society, mainly the

⁴⁹ 26-27 Kasım 2010 tarihleri arasında Türkiye, Antalya’da düzenlenen ve 50 ülkeden akademisyen, aktivist ve sivil toplum kuruluşlarının temsil edildiği “Din, Gelenek ve Modernite Bağlamında Bir Değer Olarak Aile” konulu Uluslar arası Aile Konferansı’nın katılımcıları olarak bizler; tüm ulusların yeni nesillerinin sağlıklı, verimli ve sevgi dolu tetişmeleri için doğal ailenin yapısının erkek ile kadın evliliğine dayandığına inanıyoruz. Tüm ulusların genç nüfusa ihtiyaç duyduklarını göz önünde bulundurarak doğal evliliklere dayalı çocukların çoğalmasını destekliyoruz. Kürtajı önleyen ve azalan doğum oranlarının artmasını sağlayan politikaları ve projeleri destekliyoruz. (Antalya Aile Konferansı Sonuç Bildirgesi, 2010).

⁵⁰ The conference was organized by the Journalists and Writers Foundation (*Gazeteciler ve Yazarlar Vakfı*), which is known as an institutional branch of the Fethullah Gülen Community, a religious community which has significant political impact in Turkey. See Kuru, 2007.

⁵¹ Aliye Kavaf had already been the target of heated protests when she stated that “homosexuality was an illness”. The same argument is again to be found in the remaining part of the declaration quoted above.

secularist groups, who interpreted her personal presence at the conference as the legitimization of the religious ideology by the state.

In this chapter, I once again turn to the question of the state, but this time in order to understand very specifically the situation in contemporary Turkey under the AKP government's rule, with regards to the issue of abortion. In fact, as I mentioned in my introductory chapter, the dominant perception of women's difficulties in having access to abortion upon request maintains that the reason for that is this government's religious conservatism, which is not only one consequence, but also an evidence of, the party's fundamentalist leanings. Here, I will first offer a brief sketch of the history of the AKP and its coming to power, as well as of the debates surrounding it. I will then try to offer a more satisfying theoretical framework for discussing the issue.

A Short History of the AKP's Coming to Power

When the AKP came to power in November 2002, it was a brand new party, founded only one year before. In the elections, which were held in the aftermath of a deep financial crisis in the course of which popular support for the old parties had dramatically dropped, the AKP did not only receive a spectacular 34 percent of the national votes, thus becoming the top party, but it also received 66 percent of the seats in the Parliament under a 10 percent national threshold for parliamentary representation in the Turkish electoral system (Kumbaracıbaşı, 2009; p. 2). What was most disturbing about it, for some, was not the rapid rise of a newly founded party, but the AKP's Islamist roots: although the party leadership "...has been keen to stress that the party is not a religious party," (and vigorously rejecting the attribute

‘Islamist democrat’, they coined the self-defining label ‘conservative democrat’) “... the laicist circle insists on the ‘invisible’ fundamentalist intention of the party,” dismissing its complete adherence to neoliberal principles in almost every area of social and political life (Coşar and Özman 2004; p. 66).

As a matter of fact, this kind of skepticism is hardly new in Turkish politics. ‘Laicism’, considered as one of the Atatürk’s maxims and a fundamental pillar of the Turkish Republic, defined as “the separation of the state affairs from religious affairs,” caused the relationship between politics and religion to have always been ambiguous since its foundation on. The first decades of the Republic witnessed a complete suppression of religious ideologies in the secular political field, coupled with an attempt by the ruling elite to control the religious tendencies through state regulations - for instance, through the Directorate of Religious Affairs, founded in 1924. To put differently, although it was accepted that Islamic practices and identities were still important and respectable for and within society, they were to be locked into the private sphere and remain under state control; and all kinds of religious practices that departed from this “state religion” were suppressed in more or less violent ways (Koğacıoğlu, 2004a).

Political Islam started to find more legitimate representation in the political field in the 1950s under the Democratic Party’s (*Demokrat Parti* - DP) rule; but the presence of explicitly Islamist parties has frequently been considered as a “threat to the democratic order” and has often been interrupted either by military interventions or party dissolutions by the Constitutional Courts (*ibid*). From 1970s onwards, the National Outlook (MG – *Milli Görüş*) movement, led by Necmettin Erbakan, which advocated a revival of Islamic morality and values, has successively produced a number of parties, by making a fresh start each and every time a party dissolution

occurred.⁵² Eventually, the 1990s witnessed the rise of political Islam as a more organized anti-systemic force, primarily due to the Welfare Party's grassroots mobilizing skills as well as to the emergence of a well-financed print and broadcast media network (Patton, 2009; p. 441). Back then, the environment was framed in terms of a cross-cut division between the 'Islamists' and the 'secularists'. As noted by Yael Navaro-Yashin (2002), this conflict was one of the most central issues that shaped public life in Turkey in the middle of the 1990s (Chapters 1&2). However, the content of neither category was fixed, but they were dialectically constituted through this conflictual relationship itself (p.7).

The AKP was founded upon the closure of the Virtue Party, by the 'reformist' wing of the MG movement. Breaking away from the MG line, as noted by Coşar and Özman, the party declared itself to adhere to both conservative and modern values, by defining both principles anew:

...The conservative feature of the party is expressed in the perception of 'Turkish society as a big family with a common fate, sharing bitter and sweet memories'. The party promises to provide the means for 'the reproduction of the values that form the identity of this family in the light of contemporary developments'. The reformist and modern aspects are lumped together in the assertion of the will to prepare Turkish society to meet the challenges of globalization. (...) The neo-liberal, market-based approach that dominates party identity in economic preferences has been symbolized by the emphasis on 'making Turkey an international trademark', and in Erdoğan's rather ambiguous description of his party's plan for transforming active politics into the 'politics of merchants'. Thus, regulations in the socio-economic sphere are realized on the basis of privatization, creating incentives for foreign investment and compliance with the criteria determined by the IMF (2004, p. 63).

⁵² The lineage of the National Outlook tradition can be traced as the National Order Party (*Millî Nizam Partisi* – MNP)-the National Salvation Party (*Millî Selamet Partisi* – MSP)-the Welfare Party (*Refah Partisi* – RP)-the Virtue Party (*Fazilet Partisi* – FP)-the Bliss Party (*Saadet Partisi* – SP).

As the quotation above implies, the AKP has neoliberal as well as conservative roots; and an alternative lineage of the party can be traced back to Turgut Özal's Motherland Party (*Anavatan Partisi* – ANAP), which is considered as having introduced the neoliberal policies to Turkey in the aftermath of the 1980 military coup. In fact, both parties are characterized by their adherence to the fiscal recommendations proscribed by the IMF, like deregulation, trade liberalization and massive privatizations. Furthermore, the solutions they appeal to in the face of the resulting growth in social inequalities are basically the same: "...the parallelism between the two parties is especially noteworthy in terms of their perspective on how to remedy inequalities resulting from the economic sphere. Both have emphasized the belief that human welfare is a moral concern and have depended heavily on the spheres of private-sector philanthropy and traditional social solidarities (especially the family) for the provision of social welfare services" (Patton, 2009, p. 443).

At any rate, the most animated debates in the mainstream concerning the AKP and its rule were fought in terms of Islamism-secularism debate rather than on the basis of policies adopted;⁵³ and the age-old dichotomies, following the pattern 'modern *versus* backwards' colonized the public discourse. However, this time, the divisions had become more ambiguous and the debates reflected this ambivalence: contrary to its predecessor, the Welfare Party's cadres who openly advocated an Islamic 'Just Order', the AKP declared its adherence to the present secularist order, and set the integration into the European Union as one of its priority goals.

⁵³ I am by no means meaning to say that analyses on the neoliberal features of the AKP are not being made at all; which would be both misleading and wrong. In effect, both social scientists and activists engaged in oppositional (especially Marxist) politics have always been keen on this point. However, their voices have been, and still are, marginalized and silenced in the mainstream media by the deafening noise of the more "culturalist" debates.

Scepticism peaked: was the AKP engaging in *takiyye*⁵⁴ or did it ‘earnestly’ sought modernization? Was Turkey under AKP rule ‘regressing’ or was the party the real agent of progress in Turkey? (Camcı, 2009) In this manner, the party was either portrayed in a conspiratorial way, as sinisterly following its hidden fundamentalist agenda; or in a hyperbolic way, as the sole agent of democracy in Turkey.⁵⁵ Alternatively, class-based analyses pointed out to the emergence of a new middle-class, namely, that of the ‘Islamic’ or ‘devout’ bourgeoisie, challenging the hegemony of the (former) Republican élite (Gümüşçü, 2010), or to the struggle between the “centre” and the “periphery” (Şen, 2010). Either way, the dominant imagery of the AKP’s coming to power is that of a politically marginal group getting hold of the state machinery and replacing the old cadres with its own so as to rule the country at its will (e.g., see Yılmaz, 2007).⁵⁶

As can be expected, women’s issues were once again the terrain on which the politics were played out, as it has been the case in all contexts, across time and space, where the question of ‘modernity’ was at stake (Parla, 2001). To say the least, the ‘headscarf question’ has been the hot-button issue of Turkish politics during the

⁵⁴ The word, literally meaning ‘dissimulation’, connotes the temporary concealment of one’s religious commitments with the intention of, and until, achieving a particular goal, especially political power. The term has been popularized in the mainstream media especially in the second part of the last decade.

⁵⁵ This latter view has been especially popular not only among the AKP’s ‘conservative base’, but also among a number of scholars and commentators referred to as ‘left liberals’. Their point is basically that since the AKP adheres to the Copenhagen Criteria recommended for the integration into the European Union, whatever be its leadership’s ‘true intentions’, this government will open the path for democratization in Turkey, breaking away from the despotic/military state tradition (for instance, cf. Insel, 2003).

⁵⁶ The issue is in effect far more complicated, with the questions concerning the ‘deep state’, an unresolvable puzzle of the Turkish politics. For the complexities of the dominant representations of the state throughout the society with respect to ‘deep state’ in Turkey, see Navaro-Yashin (2002) and for a recent example of works on the Turkish ‘deep state’, see Jenkins (2009).

last decade⁵⁷ (Turam, 2008). The debates ostensibly focused on the presence of women in the public sphere; but the limitation of the framework with the issue of veiling served to conceal more than what it helped to reveal. To put it bluntly, the vehemence with which the question has been addressed, by the proponents and the opponents of the AKP alike, overshadowed all other problems faced by women, from violence to employment, by making them appear secondary if not superfluous.

In the following section, I will try to outline an alternative framework for considering the AKP government's rule and the way it has touched upon women's lives instead of these dichotomizing perspectives whereby the AKP is either the black cloud in the blue horizons of the Republic's daughters, or the brave saviour of women's liberties against a dethroned, but still threatening corporatist state élite. In order to be able to do that, I suggest to move away from one recurring theme of the discussions about the AKP; namely, from the depiction of the state as a machinery, a mere instrument which can be used for any purposes by whatever social group or class capable of capturing it.

State, Law and Regulation

In their influential book, Philip Corrigan and Derek Sayer (1985) propose to think of state formation as cultural revolution: through a comprehensive analysis of the development of the English state from the eleventh to the nineteenth centuries, they lead us "...to grasp state forms as culturally constructed and cultural forms as state-regulated" (p. 3). Here, the stake is not a mere reciprocity between state and culture:

⁵⁷ Navaro-Yashin (2002) offers a detailed account of the way in which the headscarft issue used to be addressed in 1990s. Although some of the themes have slightly changed, the content of the discussions in the 2000s was basically similar to those.

the concept of moral regulation, which, in a sense, is the third term in this equation, plays the key role:

[Moral regulation is] a project of normalizing, rendering neutral, taken for granted, in a word ‘obvious’ what are in fact ontological and epistemological premises of a particular form of social order. Moral regulation is coextensive with state formation, and state forms are always animated and legitimated by a particular moral ethos. Centrally, state agencies attempt to give unitary and unifying expression to what are in reality multifaceted and differential historical experiences to groups within society, denying their particularity. (p. 4)

In this manner, the state stops being considered as a tool which can be possessed, or as a space to be colonized; but emerges as the product of an ongoing process: “...The capacity of such groups to rule rests neither on some supposedly ‘prior’ economic power –it is, on the contrary, above all through state forms and their cultural revolution that such power is made, consolidated, legitimated and normalized– nor simply on their control on some neutral set of state instruments” (*ibid*, p. 203). The formation of the state, in parallel to the infinite struggle over forms, meanings and norms, which is the cultural revolution, continues indefinitely, or better said, that the state *comes to be formed* infinitely, precisely as long as different cultural claims persist to compete for becoming state forms: the state is produced through the mundane practices which endorse particular claims while rebuffing others (Gupta and Sharma, 2006). However, it should be noted that state formation does not take place in a socio-political vacuum, but always follows certain predispositions - which we can as well call structural tendencies. Yet, considering structures ahistorically tells us little about the ways in which power is organized around and through them. Therefore, the crucial task is to delineate how institutional and customary practices enter in dialogue with, and mutually constitute one another.

Along these lines, this framework bolsters the critical theories of the state that this study builds upon, in that it challenges the notions of state and civil society as empirically distinct entities. The concept of moral regulation, by putting emphasis on the relational character of modern power, and calling attention to the complexity of the ways in which it operates, helps to overcome this binary distinction and breaks the immediate causal relationships that such ‘enframings’ (Mitchell, 1990; p. 566) impose on the analyses of social control. To put it more explicitly, it allows one to consider, paralleling the process of state formation, the production of a particular social context within which it becomes possible to act in certain ways or to endorse certain discourses; instead of envisioning a homogeneous entity called “the State” that has an autonomous existence from ‘civil society’, and unilaterally enforces particular ways of behaving over it.

More importantly for my purposes here, this account does not only complement the conceptualization of “law as an area of governance” that I offered in the first chapter of this study, but it also will enable me to better elaborate on the intricate manner in which state laws, policies and discourses contribute to the formation of a particular cultural network -while they themselves are being constantly in-formed, trans-formed, and re-formed by it- which molds the patterns for acceptable behaviours, preferred forms of social practices, and ordinary statements about the order of things. Moreover, it also establishes the interconnection of politics and morality: the state, henceforth, does not stand as a mere apparatus of repression, but also as a means by which citizens are constituted as subjects.

Shelley Feldman (2010), in her study on the *sati* practice in Bangladesh, suggests that “subjectivities are constituted through customary and religious norms as well as through civil law. Together, these relations establish gender appropriate

behavioral expectations and sanctions, and, importantly, women's construction of their own subjectivity." (p. 308) Furthermore, she maintains that trying to make a distinction between civil, religious and customary practices, even analytically, is made pointless, if not impossible, by the fact that these practices not only often overlap and work together, but also that it is through their functioning together, even when it occurs in distinct ways, that power operates and rule is established and consolidated. Therefore, a particular activity's being legal does not directly imply that it will be recognized as officially sanctioned: "the institutions and the institutionalization of normative regulation may, under some circumstances, overlap and reinforce each other while, in other instances, differences among them may provide a critical space to manoeuvre" (Feldman, 2010; p. 307). Yet, in other instances, the differences among them might allow certain ones among them to gain precedence over others, which in return would be outweighed by them.

Then again, if the law comes to the forefront as one of the basic mechanisms which help to establish and maintain this kind of regulation, it is due to the 'vacuity' (Golder and Fitzpatrick, 2009) of the law: its lack of finalized content allows it to be an area open to contestation on the one hand, and on the other hand, exposes it to the possibility of being dominated by different, and often contradictory sorts of claims depending on the contingencies of the context. This, I shall argue, is precisely what enables the law to hold such a powerful position in the process of the formation of the state and its regulation over its subjects; and what makes it a privileged site of 'battleground' for competing political groups.

All of this, I hope, will become clearer when we start to think in more concrete terms. Let us return to the question of abortion and the state. As argued in the previous chapter, the direct reason why it is getting increasingly difficult to have

access to abortion in public institutions seems to be the neoliberal health policies pursued by the AKP government. But can this immediate causality explain why it is exactly this service which is affected by the budget cuts, and not postpartum and neo-natal care services (which are, actually, getting increasing funds)? Or can it account for the decreasing social acceptability of abortion? In fact, if we are to trust Yeşim İşlegen, the chairperson of the Turkish Medical Association's Women's Commission, in her claim that in recent years, women who come to her place to have abortions "ask as if they are doing something morally corrupt, ashamedly, in a low voice. Yet, until recently, people used to find such situations so natural;"⁵⁸ we can hypothesize that the acceptability abortion, parallel to its accessibility, has definitely decreased.⁵⁹

One anecdotal incident from my research is illustrative in this respect. One day, I ventured into one of the biggest public research hospitals, having heard from a friend that she once had an abortion there.⁶⁰ I headed to the gynaecology unit, and asked the attendant whom I should consult to talk about abortion. The attendant, a woman of forty to forty-five years of age, immediately answered: "But abortion is prohibited!" (*Kürtaj yasak!*) Now this seems telling to me, in that it reveals not only the attendant's lack of information about her own rights as a woman, but also in that it displays her immediate sense that abortion is illegal. Assumptions, even when they are proven to be erroneous, are never unfounded, but grounded in individuals'

⁵⁸ "Sanki ayıp bir şey yaparmış gibi, utanarak, sessizce soruyorlar. Oysa eskiden bu durumlar çok sıradan karşılanırdı." Yeşim İşlegen, From the panel speech delivered on the 19th February, 2011.

⁵⁹ İşlegen's words, of course, are not the only indicator of this tendency. Even a quick google search shows the extent to which abortion is viewed less and less acceptable, in Islamic as well as more secular pro-life grounds alike.

⁶⁰ Actually, I found out that this hospital did not contain a family planning unit, and does not provide abortion upon request. There used to be a reproductive health centre there, back in the 1990s, which was founded as part of a EU project. I met many women who used to go there for all kinds of birth control services, all of whom remember the centre as an ideal one. However, the centre has been dismantled in the early 2000s, upon the termination of the project that it was part of.

subjective perceptions of the social world that they live in. Therefore, this mistake of a woman health worker, working in the gynaecology unit of a public hospital, is indicative. The question to ask should be, therefore, how does abortion come to be perceived as illegal in contemporary Turkey, while it is legally sanctioned? How has it come to be felt as morally wrong, while until recently, it used to be perceived as a mundane practice (Gürsoy, 1996; Shorter and Angin, 1996), and was available with relative ease in public institutions? (Bulut, 2001)

The AKP Government's Pro-natalism

“Look at me, prime minister / Don't you put us out of temper / Go nest yourself / To breed one, two, three little Turks!” was the slogan invented by the feminists, following a speech by the PM Recep Tayyip Erdoğan in Uşak, on the eve of International Women's Day in 2008, in which he appealed to all Turkish women to give birth at least to three children:

What do they want to do? They want to exterminate the Turkish nation, that is what they are doing. If you don't want your population to decrease, all families should have at least three children. The decision is yours, it is another issue. But I have lived through this, I'm telling you sincerely.⁶¹

Despite the wide reaction this speech received from women's and feminist organizations as well as from health and population planning experts Başaran, 2010);

⁶¹ “Bunlar ne yapmak istiyor? Türk milletinin kökünü kazımak istiyorlar, yaptıkları şey bu. Nüfusunuzun azalmasını istemiyorsanız, her ailenin en az üç çocuk sahibi olması lazım. Takdir sizin, o ayrı mesele. Ben yaşadım inanarak söylüyorum.” From Erdoğan's 06.03.2008 Uşak speech, (“Erdoğan: Kadınlar Doğurun, Türk Milletinin Kökünü Kazıyacaktılar!”, 2008).

a number of ministers from Erdoğan's cabinet have ardently supported this claim,⁶² and Erdoğan himself has repeated this request time and again since then:

They say 'as much as you can look after, not as much as you can have'. Can there be such an absurd thing? Now I have four children. I look at rich people, you cannot see them having more than two. It is almost as if they were considering children as burden... We wish all of our citizens to have at least three children, and I consider it as a matter of national survival.⁶³

Although these pro-natalist claims made by top government officials were not directly complemented with anti-abortionist statements, several articles condemning abortion have been published in *The Piety*, the official journal of the Directorate of Religious Affairs. For instance, in 2005, an article published in *The Piety* stated that abortion was a crime that must be avoided even in cases of rape (Sula, 2005). In 2007, another article from *The Piety* (Karagöz, 2006) was brought to the Turkish Parliament's agenda by the feminist deputy Gaye Erbatur, who entered a motion about the issue. The motion asked whether this statement in an official journal should be read as indicating that the abortion law was going to be changed, and that abortion was to be criminalized. In his answer to the motion, the president of the Directorate of Religious Affairs stated that although law did not have to follow religious doctrines in a secular republic, people were free to choose to follow religious guidelines or not, and it was the Directorate's duty to inform people about these guidelines.

⁶²Significantly, Aliye Kavaf, the Minister in Charge of Women's and Family Affairs, and Recep Akdağ, who were the first to support this claim. "‘Üç Çocuk’ Çağrısına Sağlık Bakanı Desteği," *Radikal*, 12.03.2008, "Çubukçu da Erdoğan gibi Üç Çocuktan Yana," *Radikal*, 25.11.2008.

⁶³ "‘Yapabileceğin kadar değil, bakabileceğin kadar’ diyor. Böyle saçmalık olur mu? Benim şu an dört çocuğum var. Zenginlere bakıyorum, ikiden fazlasını göremezsiniz. Çocukları adeta yük olarak kabul ediyorlar. Bütün vatandaşlarımızın en az üç çocuk yapmasını arzu ediyoruz, bunu da bir milli beka meselesi olarak görüyorum." From Erdoğan's speech in a TV programme on Kanaltürk on 02.09.2010, ("Az Çocuk Saçmalık," 2010).

As a matter of fact, in contrast to many places around the world, such as the United States where it is *the* political controversy, abortion has never been, and still is not, a major public issue in Turkey. As this brief media review of statements about family planning made by prominent state officials shows, the current government does not adopt openly anti-abortionist discourses. Yet, it follows the global trend of pro-natalism, which is on the rise in developed and developing countries alike. Indeed, to advise “the nation’s women” to give birth to three children is not a practice which is unique to Turkey: for instance, the Australian Treasurer Peter Costello verbalized the same call to women in his 2004 budget speech: “One for dad, one for mum, and one for the country” (cited in Waldby and Cooper, 2008).

This pro-natalist trend, which comprises a wide range of features from discourses exalting motherhood to state policies attempting to enhance birth rates (such as improved childcare, better maternity leave, baby bonuses...) is not surprising considering the fact that in the OECD countries,

total fertility rates declined dramatically over the past few decades, falling from an average of 2.7 children per women of childbearing age in 1970 to 1.6 in 2002. By 2002, the total fertility rate was below its ‘replacement’ level – a cohort fertility rate of 2.1 would ensure the replacement of the previous generation, and therefore population stability, under assumptions of no immigration and of no change in mortality rates – in all OECD countries except Mexico and Turkey. (D’Addio, A.C. and d’Ercole, 2005)

The anticipated consequences of the resulting decline in the proportion of working population and aging citizenry, which “...are said to include depressed economic growth through increased demand on welfare and healthcare provision, and a reduction in taxation revenues as a smaller proportion of the working population support a larger proportion of retirees and those with chronic illness” (Waldby and Cooper, 2008; p. 57), produced considerable anxiety on the part of state agencies.

Not only economic, but also nationalist and racist concerns provoke the rise of pro-natalist discourses in many parts of the world (Krause, 2001; Stark and Kohler, 2002; Brown and Marx Ferree, 2005).

The nationalist undertones of Erdoğan's speech went hardly unnoticed.⁶⁴ Still, "population sustainability" is the basic pillar on which the PM Erdoğan and his ministers build their pro-natalist statements, despite the fact that various scientific agencies, like the one quoted above, report that Turkey is exception to the global trend of aging population: the proportion of its young population is so high that the current birth rate of 2.2 children per women of childbearing age ensures that neither considerable aging, nor decrease in population will not take place for at least the next 30 years. Erdoğan's projections seem to significantly differ from these calculations, however:

The West is crying now, don't you ever fall into these traps. At present, our population is young. But if things keep on going like this, in the year 2030, the majority of Turkey's population will be over 60 years of age. This is dangerous for us. We do not want to endure this danger. We have to establish a good balance.⁶⁵

I should not go on without noting that, in the age of the "Competition State" (Cerny, 1997), in which the states are more concerned with attracting global financial capital than with providing for their citizenry, and in which, consequently, deregulation and devaluation of the workforce are the key to achieve global competitiveness, these claims seem to be forthright, at least to a certain extent. In other words, there is no reason to doubt that these economic concerns are exactly what lies beneath the state

⁶⁴ In effect, taken together with the "Kurdish issue" which has regularly flared up throughout the AKP administration period, it is unlikely that one does not get some sense of social engineering from such statements. See, for instance Diken, 2008.

⁶⁵ "Batı şu anda ağlıyor, sakın bu tuzaklara düşmeyin. Şu anda nüfusumuz genç. Böyle giderse 2030 yılında Türkiye'nin nüfusunun çoğu da 60 yaşın üzerinde olacak, bu bizim için tehlikelidir. Bu tehlikeyi yaşamak istemiyoruz. Bunu iyi dengelemek zorundayız." From Erdoğan's 06.03.2008 Uşak speech ("Erdoğan: Kadınlar Doğurun, Türk Milletinin Kökünü Kazıyacaktılar! 2010).

officials' pro-natalist ambitions;⁶⁶ whether the threats that they envision have solid material basis or not. But my aim here is not to unearth their "truest" motivations in adopting these discourses. Rather, I am concerned with understanding the dynamics of the political climate within which a prime minister can address the "nation's women" in an utterly authoritative language, and urge them to bear several children despite a wide range of shortcomings in the Turkish welfare regime and employment structure, which actually cause various predicaments and obstacles for women with children.⁶⁷ I argue that understanding these dynamics offers more insights into the increasing inaccessibility of abortion upon request in contemporary Turkey than looking for a repressive anti-abortionist intention on the part of the state.

To be sure, states can, and do have "population policies", and implement them in more or less coercive ways; with varying degrees of success in attaining their declared goals (Connelly, 2008, Hartmann, 1995). But in any case, it would be misleading to think that state policies, no matter how repressively applied, lead to a direct transformation in common ways of thinking and behaving. Besides, the more such projects are designed and implemented "from the above", the more they are likely to end up in failure, if not in some kind of catastrophe (Maternowska, 2002), just like other attempts at social engineering (Scott, 1985). Therefore, I propose to

⁶⁶ Still, it should be noted that this national-developmentalism is, predictably, accompanied by nationalism.

⁶⁷ The PM Erdoğan and other ministers began to verbalize these pro-natalist goals in 2008, the year when a law with the intent of fighting unemployment, publicly known as "the New Incentive and Active Employment Package" was prepared and passed, and where the new social security law (SSGSS) took its final shape. Many commentators, feminists and those concerned with women's rights, were infuriated by several features of these laws. To name only a few, the employment package abolished the employer's obligation to set up breast-feeding rooms in work places where 100 to 150 women worked, and day-care centres for children younger than six years of age in work places where more than 150 women worked; the new social security law brought about a decrease in maternity leave wages and shortened the period of breast-feeding assistance provision. According to the critiques, the government's adopting pro-natalist discourses on the one hand and these kinds of social policies on the other, implied women's being expelled from wage work, especially from formal employment, through state policies.

stick to the moral regulation framework, which offers an enriched perspective for seeing how particular ideas become predominant within a society.

True, the state's role is central in moral regulation: the 'official seal of approval' of the state adorns only particular forms of activity while pushing others outside of scope. The former are thus allowed to become increasingly 'normal' and taken-for-granted, since they are actively 'encouraged' to the point of coming to be recognized as 'provisions'. By contrast, the latter simply drop out of the field of possibility. Yet, this requires a process of

...immensely long, complicated, laborious micro-construction and reconstruction of appropriate forms of power; forms fitted to ways in which a particular class, gender, race imposes its 'standards of life' as 'the national interest' and seeks their internalization as 'national character'... [P]olitical power resides rather in the routine regulative functioning of state forms themselves, in their day-to-day enforcing, as much by what they are as in any particular policies they carry out, of a particular social order as 'normality', the boundaries of the possible. (Corrigan and Sayer, 1985; p. 203)

I shall suggest that the reiteration of authoritative pro-natalist statements by top government officials, and the normalization of such claims have much more significant effect on the creation of a certain social/cultural environment, in which *not* to have children, *not to want* to have children, or to have an abortion come to be perceived as deviant, than official measures restricting abortion would have. And it is only within such a climate that women's being deprived of their legal rights can be perceived as unproblematic; since this right ceases to be perceived as a *right* and comes to be seen as an aberration.

It should have become clear by now that what I am pointing at is not a mere causal relationship: I am not arguing that the government enacts a covert anti-abortionist plan, by first discursively legitimizing pro-natalism and anti-abortionism,

and then by imposing it through health care policies. Rather, I suggest that, state officials' authoritative claims, health agencies' reluctance to provide abortion, and the decreasing acceptability of abortion throughout society are all part of the same process of the formation of a particular cultural climate. The state's role in this process is central; however, it would be erroneous to think of the state as an active agent in this process: rather, the state should be considered as a site of mediation between the constitution of subjectivities and larger structures of power relations. In this sense, states *restate* rather than simply stating: "They determine because of what they repeat, and represent, structured relations resulting from power and control" (Corrigan, 1981; p.320). A state policy can be effective only insofar as it successfully translates structurally shaped forms, by enforcing them through routine practices, into social realities which are part of people's subjectivities and identities.

Therefore, I propose to scrutinize the background against which abortion becomes increasingly inaccessible and considered improper, social policies which empower women erode, a PM can recommend "the nation's women" to give birth to three children in an utterly paternalizing manner; since the dynamics of this background have more explanatory value of the spontaneous anti-abortionism that has thrived in Turkey in the last decade, rather than looking for the traces of a coherently organized anti-abortion movement.

The Unholy Alliance: Neoliberalism and Neoconservatism

One thing needs further clarification at this point. My reading of the AKP's history and of the contemporary political climate in Turkey, with my frequent references to religion in general, and Islam in particular should not be viewed as markers of the

“continuing” importance of religion in the so-called “Muslim countries”, in contrast to the secular norms that inform everyday life in the West. This perspective, which is marked by strong Eurocentric essentialism, and which has been comprehensively analyzed and criticized by social sciences since Edward Said’s *Orientalism* (Said, 1978), is nonetheless still pervasive in studies on the Middle East, albeit in more covert guises. As noted by Talal Asad (1992), the particular historical narrative which is essential to the project of modernity, envisions an ongoing “secularization” as a gradual separation of religion from the state, whereby public life comes to be governed more by rationality and less by religious bigotry and superstition. Muslim societies are viewed with suspicion in terms of their ability to reach this proposed stage: the binary that is supposed to exist between Islam and Christianity asserts that Muslims are directed (exclusively) by the Koran, the content of which is rigid and unchanging; whereas Christians (and Jews, for that matter) are free to interpret the Testament as they please (Asad, 2007; p. 27).

This vision is challenged not only by the critical studies on Islamic societies, which establish the dynamism within them with respect to interpretations of the Koran and the ways in which everyday practices develop; but also by the literature which asserts that “...not just that the separation (‘secularization’) has been incomplete, but that even in Western liberal societies ‘modernized religion’ and ‘secular culture’ have supported each other in crucial, if often indirect, ways,” (Asad, 1992), and point to the growing importance of religion and religious communities in the West. One prominent explanation for this phenomenon is that neoliberalism, associated with the withdrawal of the state from a set of its former roles (from the organization of working conditions to the provision of social services) and with a

growing sense of insecurity, entails the “return” to communities, be it religious, ethnic, local, or otherwise (Castells, 1997; Beck, 1992).

I wish to further this argument, however, drawing on Wendy Brown’s (2006) seminal work on the relationship between neoliberalism and neoconservatism. Although the term “neoconservatism” has been extensively used for analysing different contexts in the last twenty years, my analysis will be mostly inspired by Brown’s work, who originally deals with the American context in particular, and I shall suggest that there are important similarities, at least with respect to this particular issue, between the USA and Turkey.

Describing neoliberalism as a market-driven political rationality, which entails not only the dismantling of the welfare state, privatization and growing income inequalities, but also “a specific and consequential organization of the social, the subject, and the state” according to market principles (p. 693); and neoconservatism as another political rationality advocating moralized state power in both domestic and international spheres (p. 697), Brown shows how these two apparently contradictory sets of ideas (a market-political rationality and moral-political rationality) actually work to reinforce each other: “The moralism, statism and authoritarianism of neoconservatism are profoundly enabled by neoliberal rationality... Neoliberal political rationality, which knows no political party, has inadvertently prepared the ground for profoundly anti-democratic political ideas and practices to take root in the culture and the subject” (p. 702). In other words, while neoconservatism rose (at least partially) as an answer to the erosion of meaning and morality caused by neoliberalism, it found its solid base in yet another corrosion brought about by neoliberalism: namely, that of democratic values, institutions and practices.

Although religion is not a defining aspect of neither of these two political rationalities, its role is nonetheless vital in their expansion in that “...a religiously interpellated populace... facilitates the reception of the de-democratizing forces of neoconservatism and neoliberalism”⁶⁸ (p. 706). This point is precisely what makes it possible to draw the parallels between the US and Turkish contexts: although the *content* of the religious ideology is definitely important in terms of policy outcomes, and each context undoubtedly has its singularities with respect to its cultural as well as religious background, two salient features of the de-democratization process described by Wendy Brown (both of which find resonance with practically all religious discourses) make it possible to single out the equivalence among different contexts: submission to state authority and reliance upon “traditional” family values.

In effect, the increasingly blurring line between political and religious discourses makes it easier for state agencies to portray themselves as unquestionable figures of authority; and to adopt increasingly authoritarian stances regarding virtually every domain of social and political life. But more important for the argument at hand is the second feature: namely, the increasing centrality of family in politics.

As a matter of fact, the “return to the family” has nothing distinctively Islamic, just as it has nothing uniquely Turkish: from the 1980s onwards, these kinds of discourses (and the policies accompanying them) have been on the agenda of various governments in many parts of the world – a trend which dates back to Margaret Thatcher’s claim that “there was no such thing as society, only individual

⁶⁸ One important thing to note is that the term “political rationality” here does not refer to the concept of “ideology”, denoting a “masking” of the class interest by super-structural means. The term rather implies “a specific form of normative political reason organizing the political sphere, governance practices, and citizenship.”

men and women, and their families” (quoted in Harvey, 2005; p. 23). It has often been argued that family was being singled out as a counterpoise mechanism to the effects of neoliberalism: the withdrawal of the state from the provision of social services, such as child rearing, the care of the elderly and of the sick, ascribes those duties (back) to the “family”, and practically, on women. Neoconservatism, in its turn, served to naturalize women’s role within the family and thus reinforce patriarchal power relations by “...revalu[ing] women’s place within the family and, particularly as mothers” (Larner 2000; p. 256): therefore, enabled by neoliberalism, neoconservatism served, in return, to legitimize it.

As noted in the second chapter, the crucial role attributed to the family, the definition of appropriate gender roles in relation to family, and particularly, the singling out of motherhood as women’s foremost duty are not new to Turkish politics. Nükhet Sirman (2005) shows how the Republican polity relied upon a “gendered discourse in which the ideal citizen is inscribed as a sovereign husband and his dependent wife/mother than an individual, with the result that position within a familial discourse provides the person with status within the polity” (p. 148). In this sense, we should think of continuity between the AKP and previous governments. But previously, family stood rather as the organizing principle of the private realm: as argued by Chatterjee (1986), in postcolonial contexts, putting forth the difference from, as well as the sameness with, the colonizer is a matter of nationalist concern, a predicament overcome by the distinction between the public and private realms. In this manner, the former is considered to be governed by the principle of rationality, a medium of equity with the colonizer; whereas the latter is the realm in which

difference is articulated.⁶⁹ While the distinction between the private and public realms, as asserted by feminists, is discursively constructed rather than being self-evident (Senotier et al., 2009), it can hardly be argued that public realm was untouched by this particular construction of family and gender. What is new today is that, whilst the division between the public and the private are redrawn by neoliberalism, the AKP's current discourses on family explicitly acknowledge the organizing role of the family in the public realm (i.e., in both economic and political domains). To be more clear, while the Republican imaginary required women to "modernize" (for instance, to work outside the house, preferably as civil servants, without delaying their responsibilities as mothers), the new discourse emphasizes their role as mothers at the expense of any other possible identity (such as political actor, worker...).⁷⁰

Here, we should return to the issue of women's paid (wage) and unpaid (domestic) labour, which is crucial for understanding how the ostensible contradictions between neoliberalism and neoconservatism, especially the notion that "...the rich-get-richer dimensions of every aspect of neoliberalism run counter to neoconservatism's necessary reliance on working- and lower-middle-class populist base, and especially its cultivation of a traditional masculinity and family structure undercut by falling real wages and depleted infrastructures and social services," (Brown, W., 2006; p. 699) is resolved. Since the "traditional" is discursively constructed rather than a definitive pattern unchanging over time (Hobsbawm and

⁶⁹ The age-old claim of "adopting science from the West while keeping our traditional values", so prominent throughout the Republican history, can be understood along these lines.

⁷⁰ The statement made by the minister Mehmet Şimşek in March 2009 is illustrative here: Şimşek argued that the cause of the high unemployment rates in Turkey was the increasing participation of women into the labour force in periods of economic crisis. This statement clearly reveals the reasoning which views women as housewives and men as legitimate wage earners.

Ranger, 1984; Koğacıoğlu, 2004b); “traditional womanhood” under neoliberal-neoconservative alliance comes to mean more than it did before: women are expected both to look after and to provide for their families. Of course, there are huge class diversifications with regard to this latter issue, but certain neoliberal tendencies can be discerned, which affect working- and lower-middle-class women most immediately, but have serious consequences for all women through the redefinition of “womanhood.”

Women being stuck between paid and unpaid labour, as put forth by several feminist scholars (Acar Savran and Tura, 2008; Hartmann 1976), is a phenomenon as old as capitalism itself. In today’s world, however, both the scope and the content of this predicament have been reconfigured. While neoliberalism encourages the informalization and growing insecurity of work overall, women are affected more by this trend than the men (Hirata, 2003). That neoliberalism gave way to feminization of the work as well as to feminization of poverty has been argued for a while: the increasing mobility of capital throughout the world led the production processes not only to be further fragmented, but also to be moved towards the global South. In the process, new insecure forms of work, such as part-time, flexible, in-piece, house-based and so forth have been created or have proliferated, and for the most part, they are performed by Third World or immigrant women, who constitute the new “pool of cheap labour” (Mies et al., 2008). In this manner, while more and more women have joined the -often informal- job market, the value of the work, and especially of women’s work, has decreased even further (Osmanağaoğlu, 2009). Across the globe, a new competition among the developing countries started, for attracting the global capital investment by encouraging women to join this cheap labour market (Elyachar, 2005). The programmes aiming at developing women’s employment, or at

“women’s empowerment”, in Turkey and in other parts of the world alike, should be understood along these lines.

These developments are accompanied by the increasing amount of domestic work that women are expected to perform: while the state withdraws increasingly from the care services (health care, care for the children and for the elderly...), these services are passed to the family, that is, to women. This curtails women’s ability to compete for better paid jobs or for better working conditions, since they must make do with house-based, part-time, and low-paid jobs. In this manner, “the new modes of affective labor assigned to women in the family are rendered economically productive” (Aslan and Gambetti, 2011).

Such devaluation of women’s work, however, could not have been realized by itself: in effect, “women could not have been totally devalued as workers and deprived of autonomy with respect to men without being subject to an intense process of social degradation” (Federici, 2004). In contemporary Turkey, this social degradation is achieved through the AKP’s explicit religious references. However, the fact that the leading actor of the deepening neoliberalization and neoconservatization of Turkey has been the AKP does not mean that if there was another party in power, Turkey would remain untouched by these global trends; nor that the means for achieving the global integration would be entirely different: for instance, the programme of “Family Security,” proposed by the main opposition party CHP (*Cumhuriyet Halk Partisi* – the Republican People’s Party), despite the party’s secularist outlook promoting gender equality, can result in similar unfavourable consequences for women (“CHP’nin Aile Sigortası: Ama Bu Kimin Sigortası?”, 2011). What the AKP’s neoconservatism achieves is, apart from the relative ease with which such policies can be adopted, that the “natural” difference

between women and men comes to be overtly inscribed in the polity as well as in public discourse; epitomized in the PM Erdoğan's words during a meeting with women's NGO's in Istanbul:

I don't believe in equality between men and women anyway. So I prefer to say equality of opportunity [rather than gender equality]. Women and men are different, they are complementary to each other.⁷¹

So far as Erdoğan bases this claim on religion (actually, defending his earlier position, he has later specified that the difference between men and women was a question of Genesis), such a statement seems intelligible only in the context of religious neoconservatism, where even formal liberal principles of democracy, such as (gender) equality can be not only practically passed over, but also publicly denied. Furthermore, such an emphasis on the "natural" difference between women and men which singles out motherhood as women's "natural" role, does not only reduce women to wombs (Miller, 2007b), but also conveys heteronormative and homophobic implications by discursively rendering all kinds of non-reproductive sexuality "unnatural".

There is one further dimension to the neoconservative naturalization of women's lowered social status in the context of neoliberalism: violence against women. While it is argued by many that the crises triggered by the neoliberal economic restructuring enhance violence against women (Derné, 2002; Olivera, 2006); it is also acknowledged that this violence goes naturalized and unrecognized within institutionalized "hierarchies of violence" (Hume, 2009). Here, I shall suggest that we should think of the doctors' reluctance to perform abortions due to the threat of physical violence by the male partners is also a way of creating a hierarchy of

⁷¹ "Ben zaten kadın erkek eşitliğine inanmıyorum. Onun için fırsat eşitliği demeyi tercih ediyorum. Kadınlar ve erkekler farklıdır, birbirinin tamamlayıcısıdır." Kaplan and Arınan, 2010.

violence: the doctors recognize only the violence inflicted on *themselves* in the public sphere; and chose to avoid it by referring it back to the private, i.e. to the family. In other words, the violence experienced by a woman who is forced to carry an unwanted pregnancy on (which can also be presumed to be accompanied by physical violence) remains unrecognized and unaddressed, locked in the realm of the family. Of course, it is not a doctor's foremost duty to fight against violence against women; but their complete silence over the issue is telling not only about their individual conservatism, but also about the neoconservatization of the society at large: not to intervene into "familial problems" is one of the fundamental conservative *clichés*, and a prominent way in which violence against women is denied the status of a public issue.

As a consequence of particular historical conjunctures, the agent to promote Turkey's integration into the processes of neoliberalization and neoconservatization has been the AKP, and very effectively indeed. Its religious populism has facilitated the process; not only in terms of the relative ease of governing a religiously interpellated populace, but also in terms of the AKP's efficiency in organizing networks of "assistance" at the local level, which help to maintain the "sustainable poverty." Akınerdem (2008) argues that the AKP's municipal policies associate poverty with women, and women with family; a triangle through which no solutions to the problem of poverty are sought, but only assistance (and not services) is provided to the "needy."

Then again, I should note that these processes are not one-dimensional and unilateral, and women are differentially affected by these processes: in effect, the nature of the political orders and rationalities is "incoherent, multiply sourced, and unsystematic" (Brown, W., 2006; p. 691) and the reality they produce constitutes a

“messy actuality” rather than a consistent whole. Nonetheless, although individual experiences vary greatly throughout society; the contours of the intelligible, of the sayable, of the doable are drawn by these political interactions, which translate more systemic trends into everyday language and practice.

Conclusion

Throughout this chapter, I have tried to explain the significant transformation of the way in which issues related to women are dealt with under the AKP government’s rule, by contextualizing it within the global trends of neoliberalism and neoconservatism: treating women as “mothers” rather than social and political actors has gained legitimacy within the last decade, as shown by the top government officials’ public statements. My argument is basically that this can best be explained by the AKP’s effectively mirroring the global trends rather than its being “backwards”: actually the policies (be it economic or social) and the discourses they adopt resonate with these systemic forces rather than having to do with Islamic traditionalism.

How do these developments relate to the questions of reproduction in general, and abortion in particular? I have suggested that, despite its adoption of pro-natalist discourses, the AKP does not engage in explicit anti-abortionism. Still, within a cultural atmosphere where women are viewed first and foremost as “mothers” and an economic structure where women’s labour is devalued, their participation in the formal workforce becomes increasingly difficult; the more social safety nets depend on families rather than on state’s welfare regime, women are pushed, if not forced, to get married and to have children, and to perform house-

based, low paid jobs, responding to the needs of the global capital. In this sense, women's condition is affected more by the coalescing global tendencies which are mediated by state policies and discourses rather than exclusively by the latter: It is not because the PM addresses "the nation's women" and urges them to have three children that women stop working and stay home to look after children; but the normalization of this authoritative stance on women has its effects, as much as the material conditions have theirs.

Then again, I am not suggesting that to enclose women within the domestic sphere is the priority of the AKP's agenda. Individual women face different opportunities and possibilities depending on their age, class, ethnicity and so forth: for instance, some women from the newly emerging middle-class can find more opportunities for education, or get high positions in NGO work and be more "empowered" than the women they address. However, in contemporary Turkey, the margins of free choice get increasingly narrow for women.

I suggest that the inaccessibility of abortion upon request, almost completely in the public sector but also increasingly in the private clinics, is the effect of these "messy actualities" rather than the result of an anti-abortionist stand or organized pro-natalist programme of the government. Neither increasing conservatism, nor harsh liberal economic restructuring could achieve this consequence alone; the answer resides, rather, in the insidious ways in which the "neo" versions of these rationalities articulate with each other.

CHAPTER 5

CONCLUSION

Women's death ensuing from unsafe abortion, be it due to legal banishments or to lack of access to suitable healthcare provision, continue to be a major cause for maternal deaths, especially in the developing countries, as put forward in a recent medical study:

Every year, about 19—20 million abortions are done by individuals without the requisite skills, or in environments below minimum medical standards, or both. Nearly all unsafe abortions (97%) are in developing countries. An estimated 68 000 women die as a result, and millions more have complications, many permanent. Legalisation of abortion on request is a necessary but insufficient step toward improving women's health. (Grimes et al., 2006; p. 1908)

Medical experts claim that the mortality among women having abortions under standard medical conditions is much lower than the mortality among those who abort in unsafe conditions: for instance, according to a 2008 study, the ratio is estimated as 49 to 208 deaths per 100,000 operations in Turkey (Igde et al.). In addition, since these deaths are -unlike other causes of maternal deaths- almost entirely preventable, they claim that the issue should be approached as a question of social injustice rather than as a technical one: "Access to safe, legal abortion is a fundamental right of women, irrespective of where they live. The underlying causes of morbidity and mortality from unsafe abortion today are not blood loss and infection but, rather, apathy and disdain toward women" (Grimes et al., p. 1908). International organizations put heavy emphasis on this question: while the World Health Organization (WHO, 1999) declares that "All women should be entitled to safe pregnancy, safe delivery, and safe abortion," the UN Committee on the Elimination

of All Forms of Discrimination against Women (CEDAW, 1999) consider the denial of safe abortions as a human rights violation.

While admitting the importance and the urgency of the situation, throughout this thesis, I have tried to bring about an alternative perspective to the inaccessibility of abortion: rather than adopting a medical ethics perspective, which focuses primarily on women's health, and calls for improvement in the healthcare system in order to prevent women's deaths and health impairments; I concentrated on the conditions which rendered abortion inaccessible and morally improper contemporary in Turkey. In other words, rather than attempting to describe the difficulties and pains that women face due to lack of access to safe abortions, I tried to understand why women are encountering obstacles in accessing safe (and legally guaranteed) abortions, and increasingly so. This perspective acknowledges the importance of legal changes and policy reforms to facilitate access to abortion, while also pointing to their limitations by delineating the complex processes underlying the current situation.

This task impelled me to study the place occupied by the law in this process. I therefore focused on the process of legalization of abortion in 1983; and argued that the law opened up a space of contestation rather than determining the strict limits of people's behaviour. It is within this space that various political actors engage in power plays, the outcome of which shape the contours of people's field of action. This perspective drew me away from conceptualizing law as an instrument of the state, through which the state imposes its will on people, and directed me to be more attentive to the state's role in this process. Drawing on the literature on ethnography of the state, I tried to approach the state as "a phenomenological reality" that can be analyzed through its effects on everyday practices of individuals. I therefore planned

to conduct a field research in public healthcare institutions in order to grasp these effects.

During my field research in public healthcare institutions, I observed that each institution took certain liberties in interpreting and applying the written official documents. I argued that it is the space opened by the law that allows the diversification among institutions at the level of everyday practices, which I called “institutional improvisation.” I tried to contextualize my observations within the current trends in healthcare policies of the state; and remarked that the new health reform program, the so-called Transformation in Health introduced by the AKP government, while not directly restricting the performance of abortions, prepared the conditions for its inaccessibility. In this sense, the increasing inaccessibility of abortion is an unintended consequence of the new public health policy.

This observation only partially answered my initial questions: it revealed the practical reasons that lead to a gradual decrease in the provision of abortion services, but said little about the conditions under which this became possible in the first place. In effect, the term “unintended consequences” does not refer to mere haphazardness, but points to underlying structural powers that lead to the convergence of certain tendencies. With that in mind, I had to contextualize my findings within the more general political climate in Turkey, and within the current government’s stance on women’s issues in general. I concluded that the articulation between neoliberalism and neoconservatism, which currently takes place under the AKP government in Turkey, gives rise to a social and political atmosphere that is remarkably anti-women; whereby the family emerges as the fundamental organizing principle of society, and whereby women are defined primarily by their roles as (or by their capacities to become) mothers so that they are not only exploited and

oppressed more and more intensely, but also denied various social rights (access to abortion being one among them) and forced into a particular way of living (heterosexual-familial).

Akile Gürsoy (1996), in her study of abortion has long ago argued that in Turkey, abortion upon request was neither a question of individual choice nor an area for state intervention, but was a matter of family decision. I disagree with this perspective in that family is not an institution autonomous from the state: rather, I am drawing on Nükhet Sirman's argument that in Turkey, family has always been the basis on which citizenship is founded. In that sense, family is, as it has been in the past, the utmost political institution. What is new today is that as a consequence of the articulation between neoliberalism and neoconservatism, new forms of oppression and domination are being produced and legitimized under the banner of family.

On September 9, 2009, excessive rain set entire districts of Istanbul under water – especially poor neighbourhoods where infrastructure is considerably deficient were among those affected. Among many casualties, one incident drew particular attention, due to the protests of feminist and leftist groups: seven women, working for a textile company, drowned, locked in the haulage of the van that was being used as service vehicle by the company. The outrageous fact about the incident was not only that these women were subject to inhuman treatment, but also that the owners of the company were acquitted in the first court hearing, mostly because the relatives of the women abandoned the case, by accepting a settlement offered by the company proprietors (“Bilirkişiden ‘Pes’ Dedirten Rapor, 2010”).

On December 7, 2010 Ayşe Paşalı was killed by her ex-husband (Belge, 2010). She was, actually, only one among many women killed by a male relative of hers in Turkey: in 2009, the Minister of Justice had to announce the statistics on killings of women upon a motion entered by a deputy. The numbers were striking: from 2002 to July 2009; 4,063 women had been killed by men, with an increase of 1400% in seven years (Başaran, 2009). These numbers, of course, reflect only the official records; the actual number is estimated to be much higher: according to feminist groups, at least three women are being killed by their male relatives each day. The case of Paşalı has become a landmark, once again thanks to feminist protesters, because of some peculiarities of her story: she had applied to the police and to Ankara Prosecution Office claiming that her life was under threat by her ex-husband, but was denied protection on the grounds that “marital bonds no longer existed.” The case drew nationwide attention, a fact that did not prevent an identical plot from taking place on February 10, 2011: this time, Arzu Yıldırım, whose application for protection had been turned down by the Istanbul Attorney Generalship, was killed by her ex-husband (“Dün Ayşe Paşalı, Bugün Arzu Yıldırım, Yarın?”, 2011).

The perspective that I have tried to offer, in this thesis, renders visible the interconnection between these events and the consequences of the inaccessibility of abortion, rather than enclosing the latter in the public health domain, or even handling it as a human rights issue. While I am not implying that there is an immediate relationship, I am suggesting that all of those things become possible only within a particular cultural environment, within which women are utterly degraded as social and political agents, and their bodies and labour are outright appropriated and

exploited - by men as well as by the market. While the denial of the right to abort is telling in its own right, and has its particular outcomes (often disastrous for the women in question); delineating the characteristics of the context within which it becomes possible allows us to see these more implicit interconnections. While one is not the direct cause of the other, the increasing inaccessibility of abortion, the rise in the numbers of women killed by men, and the deteriorating working conditions for most women do not historically concur in contemporary Turkey by way of mere coincidence: these are the unintended consequences of particular political trends; yet they follow the structural fault lines while being unintended.

Wendy Brown (2002) accuses feminist groups of “framing [the] reproductive freedom primarily in terms of accidental and unwanted pregnancy – the need for abortion” and therefore allowing “heterosexuality [to] continue to be naturalized and normalized (...) while other sexualities are marginalized” (p. 425). By contrast, I have tried to frame the question of abortion from a perspective which does not preoccupy itself exclusively with reproductive freedom, just as it does not focus on the public health dimension of the issue. This perspective, I will dare to suggest, allows us to see the larger gendered structures of domination, which do not only subordinate women, but also impose heteronormativity with greater vigour.

A few weeks before I wrote this conclusion, a friend of mine related to me a stunning incident: she caught flu and went to the Family Health Clinic in her neighbourhood, in order to get medication. Her family doctor said that he was about to call her for a visit for her pregnancy. My friend, shocked, answered that she was not pregnant, and found out that the private hospital where she had an abortion a few

months ago informed the clinic about her pregnancy (but, for some reason, not about her abortion).

While the statement on the requirement of spousal consent for a woman to have abortion remains in the law no. 2827, according to Patient's Rights, a doctor or a healthcare institution should not share the information regarding a woman's pregnancy with anyone, including her husband and family, without her consent.⁷² I think that this incident, while at first sight seeming to be concerned only with pregnancy, is telling about the extent to which even formal rights are being eroded under the current government.

Indeed, all women, regardless of their identities and attributes, have a lot to worry about in today's world.

⁷² Personal interview with Muhtar Çokar, 22.10.2010.

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