

**‘The Murderer State Will be Held to Account’  
The Myth of the State and Its Violence**

**Ceylan Begüm Yıldız**

**School of Law**

**Birkbeck College, University of London**

**Submitted for the degree of**

**Doctor of Philosophy for the University of London**

**September 2021**

## **Declaration**

I hereby declare that the work presented in this thesis is my own, except where explicit reference is made to the work of others.

Ceylan Begüm Yıldız

## Abstract

The legal aftermath of police violence often fails to respond to public demands of accountability. What we often witness is a two-pronged response and conclusion in the legal process; police violence is either understood as an exceptional event – i.e., the wrongdoings of a few bad cops – or such violence is recognised as being exerted within the legitimate parameters of police powers. In either case, the legal processes of accountability dismiss the state’s responsibility over police violence and thus, the subjects who seek accountability find themselves in a long and exhausting legal battle which dominates their life and redefines their subjectivity. Police violence and its legal unaccountability are understood as failings of modern political and legal systems, despite their global and common reoccurrence. By drawing on critical literature, this thesis aims to rethink the connections between the state, violence, and law. By focusing on the role of myths, assumptions, and ghosts that surround the performance of state violence, and its legal address, this thesis proposes a fresh perspective for studying state violence and legal unaccountability while inquiring: *How do the meanings and assumptions concerning state violence impact the political demands and legal processes of accountability?* To pursue this question, the thesis traces the aftermath of the police killing of a fourteen-year-old boy, Berkin Elvan, during the nationwide Gezi protests of the summer 2013 in Turkey. Elvan’s police killing discloses that state violence is performed on and through subject-bodies. In the case of police violence, the state manifests through the body of the police officer who performs violence on behalf of the state. The thesis will argue the manifestation of the state renders the police officer invisible, a process revealing both the ghostliness of the police violence and mythical imaginary of the state. The events following Elvan’s death expose a violent contestation between the state’s attempt to attribute personal responsibility to Elvan for his own death, and the political demands of state accountability based on countervailing imaginaries of the state. The thesis tracks the legal resonances of this contestation through a close reading of the trial hearings which began in 2017. The Elvan family’s presence and the perpetrator’s physical absence in the courtroom serve as an indication of this contestation which reveals the linkage between state violence and legal violence. This thesis attempts to conceptualise how the ghostliness of the police violence and the mythical imaginary of the state haunts and suspends the legal proceedings, while awaiting with anticipation. As the Elvan family continues to wait for accountability, this thesis suggests that in trials concerning state violence, legal violence operates as an apparatus of waiting.

## **Acknowledgements**

I am grateful to my wonderful supervisors Başak Ertür and Elena Loizidou for their support and patience in allowing me to discover my own voice at my own pace. I thank them for their generous engagement with my work, for all the thought-provoking discussions and guidance, which kept me on track when I found myself lost within my own thoughts. I consider myself fortunate to work closely with such amazing scholars whose wisdom, kindness and wit will forever be my inspiration.

I must thank Costas Douzinas for welcoming me to Birkbeck, School of Law, where my rebellious nature was not only welcomed but could evolve and mature towards a purpose. I am indebted to Birkbeck's commitment to critical thinking and creativity, which provoked my intellectual curiosity. I will cherish the memories of heavy debating at the reading groups organised by Peter Fitzpatrick. Thank you for generously opening the doors of your office, I consider it to be an intellectual wonderland. I am lucky to have met with ground-breaking scholars Eddie Bruce-Jones, Sarah Lambie, Sarah Keenan and Nadine-El Enany, whose work is a glimpse of hope for a better future. I am especially indebted to Nadine-El Enany for showing interest in my project and for encouraging me to present a part of it at the Birkbeck School of Law Cumberland Lodge Weekend in 2019.

I could not have endured the challenges and celebrated the joys without the support and brilliance of the feminist PhD community at Birkbeck, School of Law. Organising feminist writing retreat with Sara Paiola, Serene Richards, Moniza Rizzini Ansari, Claire Horn, Carolina Amadeo and Alexandra König was indeed one of the highlights of my time in Birkbeck. I am forever grateful to Alexandra König for entering my life when I felt extremely lonely among the world of the living, for reminding me of the joys of being alive one dance step at a time and for being my creative companion. May our whimsical curiosity continue to grow together.

I would like to thank Carrie Hamilton for her careful reading of my thesis and for rendering my thoughts intelligible. I also extend my gratitude to the lawyers of the Elvan family, Can Atalay and Çiğdem Akbulut, for patiently responding to every single request of mine whilst grappling with the legal farce.

I am extremely lucky to be surrounded by incredibly creative and caring friends whose presence exceeded borders. Although it would be an impossible task to mention all, nonetheless I must thank Rüzgar Buski for his constant companionship, Eirini Avramopoulou for her wisdom and kindness, Richard Braude for his comradeship, Grietje Baars for their patience and support, Mariana Fernandes, Milo van der Maaden, and Becky Minton for being there throughout this emotional roller-coaster.

I am also incredibly lucky to be haunted by the loving memories of Burak Özgüner, Ali Arıkan, Boysan Yakar, and Zeliş Deniz, who taught me the art of being an unruly woman.

Above all, I thank my family, and especially my mother Yasemin Dorken and my grandparents Sürreyya Dorken and Öznur Dorken, for their endless love and support.

This thesis is dedicated to Berkin Elvan and to all others whose lives were cut short by the ones who kill on behalf of the state.

## List of Figures

Figure 1: Funeral Ceremony of Berkin Elvan.....	19
Figure 2: People’s Front’s Hostage-Taking.....	83
Figure 3: Funeral Ceremony of Mehmet Selim Kiraz.....	97
Figure 4: Fatih Dalgalı Istanbul Genderme Criminal Lab Report.....	119

## Contents

<b>Abstract</b> .....	<b>3</b>
<b>Acknowledgements</b> .....	<b>4</b>
<b>List of Figures</b> .....	<b>6</b>
<b>Introduction</b> .....	<b>8</b>
<b>Chapter 1: ‘The Murderer State Will be Held to Account’</b> .....	<b>18</b>
<b>Encountering the Police, Encountering the State</b> .....	<b>20</b>
<b>Leviathan’s <i>Body Politic</i></b> .....	<b>30</b>
<b>Mythical (Police) Violence</b> .....	<b>40</b>
<b>Chapter 2: Stately Performatives</b> .....	<b>49</b>
<b>Between Performance and Performativity</b> .....	<b>52</b>
<b>The <i>Father-state</i></b> .....	<b>60</b>
<b>Constructing the Enemy</b> .....	<b>64</b>
<b>Two Sons</b> .....	<b>68</b>
<b>Chapter 3: Countering Violence</b> .....	<b>73</b>
<b><i>Militant-martyrs</i></b> .....	<b>76</b>
<b><i>Counter-</i></b> .....	<b>85</b>
<b>Martyr’s Promise</b> .....	<b>91</b>
<b>Martyr of Law</b> .....	<b>97</b>
<b>Chapter 4: State Violence on Trial</b> .....	<b>100</b>
<b>Law’s Promise</b> .....	<b>103</b>
<b>The Indictment</b> .....	<b>110</b>
<b>Ghostly Perpetrator</b> .....	<b>115</b>
<b>Waiting Before the Law</b> .....	<b>122</b>
<b>Conclusion</b> .....	<b>130</b>
<b>Bibliography</b> .....	<b>139</b>

## Introduction

*Let us return to the thing itself, to the ghost, for this text is a ghost story*

Jacques Derrida, Force of Law

‘We will bring justice to Berkin Elvan’ said the masked face on the news. What had begun as a mundane morning evolved into a remarkable day, a day to remember with a heavy heart. I was glued to the breaking news, captivated by the sparkling eyes of the masked man who was listing their demands as he was holding another man under his gun. The news reported that there was a hostage-taking incident unfolding at the Istanbul Courthouse; that militants from the Revolutionary People’s Liberation Party/Front (known by the name of People’s Front) had taken hostage the prosecutor, Mehmet Selim Kiraz, who was in charge of Berkin Elvan’s case at the time, and that the negotiations were ongoing.

It was 31 March 2015. I was haunted by the sparkling eyes of the masked man, by the young and almost joyful tone of his voice. He was not only promising justice for Berkin Elvan, he was promising a just future for the people of Turkey. He was promising revolution. What I was seeing was an animated corpse who aligned himself with death; to defend the dead, to speak on behalf of the dead until his own death. Yet he was so alive. I wished him to be a lousy militant and cheat his approaching death. Suddenly I was enraged; I was enraged at him for believing his death mattered more than his life. Then I was furious at the high ranks of the People’s Front and organised left in Turkey; I accused them of brainwashing him, of making him believe only his death would bring a better future. However, soon I realised my anger was misdirected. After all, their action was a response to the police killing of Berkin Elvan and the lack of accountability over his death. If this is the case, then who was to blame for the death of the People’s Front militants, and for the death of Berkin Elvan? Is it the police officer who shot Elvan or the government which violently oppressed the Gezi protests? What about the deeply rooted political culture of state violence in Turkey? My mind drifted away from Elvan’s killing to the other countless state killings to identify a common perpetrator: the state? But then, who is the state? And how is it possible to hold it accountable? I realised the more I struggled to direct my curse towards a perpetrator, the more abstract the notion of state violence appeared to be ungraspable, mythical, almost ghostly.

As I was struggling to tell apart the beginning and the end of my train of thought, the masked man continued to list their demands with a determined tone, perhaps these associations were more transparent to him than it was to me. Essentially, they demanded the names of the police officers who were responsible for the killing of Berkin Elvan, they wanted the police

officers to confess on public television. They promised a public tribunal, they wanted to prosecute, and by which they probably mean execute, the police officers in a public square. In other words, the militants called for a public spectacle of punishment, something they were already delivering by taking the prosecutor hostage. All this could be avoided, I thought, if investigation over Elvan's death had not stalled for two years if the legal processes of accountability were implemented according to legal conventions. However, I struggled to remember one exemplary case, in which the legal processes of accountability were carried out according to legal conventions, or rather according to public expectations. At that point, I realised, their violent intervention was a signifier of this failure, the failure of holding those responsible to account. The hostage-taking was exposing the violence of this failure by replacing it with another violent act. Beyond its violent manifestation, the hostage-takers were demanding the implementation of the legal conventions of accountability whilst at the same time exposing its repetitive failure and its impossibility in the hands of the state juridical system. Thus, on the one hand, they were demanding something which has never taken place: an expectation, an assumption, a fantasy of legal mechanisms of accountability, but on the other hand, promising to deliver it themselves.

Christina Sharpe (2016), in her work *In the Wake* defines her work on 'Black dead and dying' as a work to 'defend the dead' (10). Although I was captivated by the sparkling eyes of a living dead person, I do not think I am capable of making such a heroic claim, as I do not believe I can speak on behalf of the dead, on behalf of the militants Şafak Yayla, Bahtiyar Doğruyol and Berkin Elvan, but I can tell their stories. Perhaps their death tells us somethings, things that we as the citizens of the modern political and legal world, and even worse as legal scholars, do not wish to hear. Their death exposes our assumptions about the state and our expectations from the law to protect us against the state's deadly manifestations, and when needed we expect the law to ask for answers on behalf of the dead, to hold the state accountable. But who is the state? Is it something separate from the people, society, or from the ones who kill on behalf of the state? What is it, then? An illusion of our own making? A feeling, a fantasy that we all share and live accordingly? A human-like subject without a material body, a ghostly matter? If so, how to explain its ghostly existence and yet its deadly effects? And finally, how is it possible to hold it to account?

### **The Gezi Protests and the Killing of Berkin Elvan**

This thesis traces the aftermath of Berkin Elvan's killing. Elvan received a deadly head injury on 16 June 2013 during the nationwide protests known by the name of the Gezi protests. He

was fourteen years old at the time. The nationwide protests in the summer of 2013 originated as an act of defence against the government's plans to demolish Gezi Park, hence the name, which quickly escalated into a nationwide protest against the decade long authoritarian Justice and Development Party (Adalet ve Kalkınma Partisi – AKP) rule. Some called it an 'impromptu uprising' (Yıldırım and Navaro-Yashin 2013) to emphasise the spontaneous nature of the protests. In every aspect, the summer 2013 protests in Turkey resembled the others within the global wave of protests which took place between the years of 2009 to 2013,<sup>1</sup> although each had their own nuances on social, economic and political grounds.<sup>2</sup> In the case of Turkey, what began as a localised peaceful occupation to save the trees at Gezi Park was transformed into a nationwide protest almost in one day as a response to the police violence directed towards the peaceful protestors at the park.<sup>3</sup>

Mehmet Ayvalıtaş was the first casualty related to the Gezi protests. He died on 2 June 2013 when a car drove into the protesting crowds in Istanbul. One day later, on 3 June, Abdullah Cömert died in Hatay; he was hit by a tear gas canister during the protests.<sup>4</sup> On the same day Ali İsmail Korkmaz was battered by an AKP sympathiser mob during the protests in Eskisehir; he lost his life a week after.<sup>5</sup> On 14 June, Ethem Sarısülük was shot dead by a police officer, Ahmet Şahbaz, during the protests in Ankara.<sup>6</sup> Medeni Yıldırım was shot dead by

---

<sup>1</sup> There is a vast literature on the Gezi protests, covering diverging perspectives, from political analysis to performance arts. The edited collection titled *'Everywhere Taksim': Sowing the Seeds for a New Turkey at Gezi* provides a good array of analysis from various perspectives, from political economy to performance, and locates Gezi protests within the international wave of protests (See: David and Toktamış 2015).

<sup>2</sup> Cihan Tuğal (2013) in his commentary on the Gezi protests provides a reading from a global perspective and suggests that protests in Turkey and Brazil were significantly against rapid neo-liberal development. According to Tuğal, although the 2009-2013 global wave of protests has a common axis that is 'against commodification and authoritarianism', the case of Turkey and Brazil diverged from the rest as they were against the neo-liberal development, and their authoritarian implementation, rather than protesting the collapse of neo-liberal policies. Thus, Tuğal adds, unlike the others, the protests in Turkey and Brazil were 'specially urban' and that 'Urban rights issues kicked off the protests'. (162). Similarly, Bethania Assy and Başak Ertür also elaborate on the special cases of Brazil and Turkey and provide a reading of neo-liberalisation policies in relation to law and resistance (see: Assy and Ertür. 2014). Slavoj Žižek, also emphasized the distinct nature of protests in fast-growing neo-liberal economies under the title 'Trouble in Paradise' (Žižek 2013).

<sup>3</sup> See; Letsch, Constanze. 2013. 'Turkey Protests Spread After Violence in Istanbul Over Park Demolition'. *The Guardian*. 1 June. Accessed 28 September 2021. <https://www.theguardian.com/world/2013/may/31/istanbul-protesters-violent-clashes-police>

<sup>4</sup> In March 2020 the police officer Ahmet Kuş was found guilty of 'probable intent to kill'. See; 'Police Officer Who Shot Abdullah Cömert During Gezi Protests Arrested'. 2020. *Bianet*. 12 March. Accessed 28 September 2021. <https://bianet.org/english/human-rights/221288-police-officer-who-shot-abdullah-comert-during-gezi-protests-arrested>

<sup>5</sup> By April 2017 the perpetrators received various prison sentences from ten years to seven months, see; 'Ali İsmail Korkmaz Davasında Cezalar Açıklandı'. 2017. *CNN Türk*. 5 April. Accessed 28 September 2021. <https://www.cnnurk.com/turkiye/ali-ismail-korkmaz-davasinda-cezalar-aciklandi>

<sup>6</sup> The officer Ahmet Şahbaz's prison sentence was transferred to pecuniary fine. In response, the family of Sarısülük has appealed to the Constitutional Court, see; Söylemez, Ayça. 2019. 'Impunity in the Case of Ethem Sarısülük Taken to Constitutional Court'. *Bianet*. 14 May. Accessed 28 September 2021. <https://m.bianet.org/english/law/208466-impunity-in-the-case-of-ethem-sarisuluk-taken-to-constitutional-court>

soldiers on 28 June in Diyarbakır at the protests against the high-security military compound.<sup>7</sup> On 9 September, Ahmet Atakan died in Hatay during the protests.<sup>8</sup> On 29 September, Hasan Ferit Gedik was shot dead during protests in Istanbul by gang members who are believed to have connections with the police.<sup>9</sup>

On 16 June, early in the morning, Berkin Elvan was struck down by a tear gas canister on his way to a bakery. He was fourteen years old when he got injured and passed away when he was fifteen on 11 March 2014. Although for some Elvan's death was just a tragic incident, his deadly injury was a result of excessive and arbitrary police force that was used on the protesters to suppress the protests. Tear gas canisters and rubber bullets were raining down on people randomly and, furthermore, the evidence demonstrates that his injury was not that random after all.<sup>10</sup> Thus, this doctoral thesis is a ghost story about state violence. Not only is the story haunted by the dead, but it is also haunted by the ghostly, mythical imaginary of the state and its deadly manifestation. If this is so, how is it possible to hold the state accountable?

### **The State We Are In**

At this point, I would like to provide a brief direction to clarify what I understand by 'the state'. While studying state violence and its unaccountability, I draw inspiration from two interpretations of the state. The first one is Judith Butler and Gayatri Chakravorty Spivak's (2010) conversation on the nation-state which is published under the title *Who Sings the Nation-State?* Surely the notion 'nation-state' brings another dimension to the question of the state, as it points to the issues around citizenship and belonging. However, what inspires me in this conversation is the relationship between the two meanings of the state. The first meaning is the state as a political entity that 'signifies the legal and institutional structures that delimit a certain territory (although not all of those institutional structures belong to the apparatus of the state)' (3). The second one refers to 'the "conditions in which we find ourselves"' (ibid.). Revisiting the notion of state violence in relation to the two meanings of the state – as in the state which leaves us in a certain state – allows us to separate the state (the political entity) from its effects. In that regard, it is possible to acknowledge and register the conditions and

---

<sup>7</sup> First court hearing took place in October 2015 and continues still to this day, see; 'Medeni Yıldırım Davası'. n.d. *FailiBelli*. Accessed 28 September 2021. <https://www.failibelli.org/dava/medeni-yildirim-davasi/>.

<sup>8</sup> The investigation has not yet led to a trial.

<sup>9</sup> In February 2018 the trial was concluded sentencing three perpetrators to twenty-five years of imprisonment each. See; Söylemez, Ayça. 2019. 'Hasan Ferit Gedik Davasında Neler Yaşandı?' *Bianet*. 30 September. Accessed 28 September 2021. <https://bianet.org/bianet/insan-haklari/213760-hasan-ferit-gedik-davasinda-neler-yasandi>

<sup>10</sup> For a detailed account of excessive and arbitrary use of violence and impunity for police abuses see: Amnesty International 2013.

dispositions of the subject after being subjected to state violence while keeping an inquisitive lens towards the state as a political, social, legal construct. From such a perspective, the state does not appear to have a fixed meaning, but rather something that is relational to the subject. Taking into account the relationality between the state as a political entity and the state as a condition, allows us to address its various meanings and manifestations. For example, meanings attributed to the state by those who are positioned against the state are different than those who align themselves with the state. In that regard, this relational approach between the two meanings of the state, shines a light on the reciprocal (re)constructions of the state and the subject in the context of state violence. Regarding the case study of this doctoral thesis, this allows us to register, and prioritise, the subject's positions while focusing on their expectations and articulations of the state and their experiences of state violence. Thus, rather than unpacking the issue of state violence from a state-oriented perspective, which would bring limitations to the meanings of the state, this study suggests a subject-oriented perspective to study the effects of state violence and its unaccountability.

The other inspiration is Philip Abrams's (1988) essay titled 'Notes on the Difficulty of Studying the State', which addresses the limits of considering the state as a fixed, given, entity. What Abrams notes as the difficulty is related to the issue of not attributing a pre-given meaning, a definition to the state while studying its effects. He suggests that the ones studying the state, including those taking Marxist approaches to the state, consider the state as a given, a distinct unified entity which frees the concept of state from scrutiny. When the state is considered distinct from the subjects, this renders the state ungraspable. As a result, Abrams argues that the concept of the state masks the reality, as if 'there is a hidden reality in political life' (61). According to his view, taking the state as reality disables us from acknowledging the political relations that takes place in front of our eyes. His essay can be considered as a caution to the social sciences, as he concludes:

The state comes into being as a structuration within political practice; it starts its life as an impact construct; it is then reified – as the *res publica*, the public reification, no less – and acquires an overt symbolic identity progressively divorced from practice as an illusory account of practice. The ideological function is extended to a point where conservatives and radicals alike believe that their practice is not directed at each other but at the state; the world of illusion prevails. The task of the sociologist is to demystify; and in this context that means attending to the senses in which the state does not exist rather than to those in which it does (82).

These two accounts of the state are my point of departure in studying the manifestation of state violence and its unaccountability in Berkin Elvan's case. In *Ghostly Matters* Avery F. Gordon's notes that, 'Power can be invisible, it can be fantastic, it can be dull and routine. It can be obvious, it can reach you by the baton of the police, it can speak the language of your thoughts and desires' (3). Whilst focusing on the ghostly operation of state violence, the mythical constellation of the state, the fantasies and fetishes of state power, I aim to demystify this haunting phenomenon called state violence.

## **Structure**

This thesis is organised in four chapters and a conclusion. Each chapter deals with different facets of state violence whilst following the events which took place in the aftermath of Berkin Elvan's killing. As I introduce below, starting from Elvan's funeral ceremony to the legal process, each chapter aims to comprehend the notion of state violence and its different forms of manifestation through the reciprocal (re)construction of the state and the subject. In so doing, the thesis does not occupy itself with discussing remedies that modern state and legal systems provide or fail to provide regarding the issue of accountability. Rather, the thesis aims to reveal the association between the repetition of state violence and its unaccountability through the myths, assumptions and expectations surrounding the notion, and manifestation, of state violence. To do so, the thesis first explores the manifestation of state violence and the meanings and assumptions that the convergence of *state* and *violence* bear. Then it analyses how countering performances on state violence construct the state and the subject and, finally, the thesis inquires into how the meanings of the state reflect onto legal processes of accountability.

In Elvan's funeral ceremony, the funeral crowd chants, 'The murderer state will be held to account'. That serves as a point of departure for the thesis, as the chant calls on the state rather than the police. Following the chant, Chapter 1 introduces the story of Berkin Elvan's deadly encounter with the police to explore the manifestation of the state within this encounter. Surely, interpreting police violence as state violence is not unique to this example; indeed, it is a common articulation. My objective in inquiring into the manifestation of the state is not to dispute the association between police violence and state violence; however, I argue that this association bears meanings that reflect on the legal processes of accountability and contour the performance of accountability. What is often dismissed in this interchangeable usage of police violence and state violence, is that the state is an imaginary construct of the modern psyche. It is a construct of modern (Western) political and legal systems. This aspect, however, is often overlooked, as modern political and legal institutions are founded upon the assumption of the

material existence of the state and its powers. This is also the case regarding the notion of state violence and perhaps the materiality of violence makes it harder to acknowledge the relativity of the state. This particular state of being, however, reflects on the issue of accountability; *is it even possible to hold the state accountable? If so, who is to be held to account?* Thus, the task of Chapter 1 is to provide a lens to acknowledge both the imaginary construction of the state and its deadly effects, and to provide a reading of Elvan's encounter with the police from such a perspective. In doing so, I follow scholars who consider the state in terms of fetish (Taussig 1992), and fantasy (Aretxaga 2005, Navaro-Yashin 2002, Rose 1996).

While presenting a detailed analysis of Elvan's deadly encounter with the police, I address the question *what renders police violence as state violence?* When it is the police that enacts the violence, I wonder *how does the state manifest through the police?* The state appears to be manifesting through the totem-like body of the police (Taussig 1992), as the police enact violence on behalf of this assumed higher authority that we call the state, which in return demands recognition of this authority from the subject. In that regard, I understand Elvan's deadly encounter with the police as a scene that (re)constructs both the state and the encountering subjects, which I discuss through the limits and revisions of Louis Althusser's (2014 [1871]) notion of *interpellation*. While unpacking the moment of Elvan's encounter with the police, I aim to problematise how we attribute absolute killing powers to the state which, I argue, hides the police's actions and responsibility. In that regard, re-designating police violence as state violence leads to the police being disguised by the imaginary construction of the state, which haunts the political and legal afterlife of the violence.

Furthermore, in the police's embodiment of the state and its powers, I observe a bodily overlap between the body of the police officer and the imaginary *body politic* of the state, which I inquire into through the bodily description of Thomas Hobbes's (1991 [1651]) *Leviathan*. Hobbes's bodily description of the state in *Leviathan* exposes how the modern understanding of the state is mythical and situated between Godly and worldly, a unified omnipotent and omnipresent entity that is human with a machine-like bureaucratic operation. Yet the mythical imaginary of the state is fragile and often challenged by the people. Hobbes's disapproval of public challenges in *Leviathan* provides us with a conceptual guide to comprehend how the victims of state violence are found responsible for the violence inflicted upon them, especially within the context of public revolt and protests, as incidences that perform a refusal of the authority of this mythical creature which we call the state.

Law plays a crucial role in communicating the police's command that urges the subjects to recognise the mythical constellation of the state and its authority. Law provides recognition

to the subjects, since the subjects are recognised as the subjects of law, however, despite the common belief, this recognition neither brings protection from state violence nor guarantees legal accountability. The final conceptual investigation of the chapter discloses the associations between the state, myth, and law through Walter Benjamin's famous essay 'Critique of Violence', which serves as a framework to explore their connections throughout the thesis. I continuously find myself going back to some of the points that Benjamin raises in his essay: violent foundations of law, the ghostliness of the police, and the deadly fate of those who disobey. Indeed, the state official's response to Elvan's death as nothing but an expected tragic event of a disobedient boy becomes intelligible through Benjamin's remarks on fate in relation to ghostly police violence. Following Benjamin's remarks, the chapter unpacks how and why it is necessary for the law to turn a blind eye to police violence, as law's existence depends on the police violence which consolidates the fragile mythical imaginary of the state, and its authority, through a repetition of violence.

The following chapters expand on the conceptual framework that is introduced in Chapter 1, by following the chain of events that occurred in the aftermath of Elvan's death. Chapter 2 provides a detailed analysis of the mythical imaginary of the state and its operation through a close reading of the President, then-Prime Minister, R.T. Erdoğan's response to Elvan's death in a rally speech. Primarily in his speech, Erdoğan accuses Elvan of acting like a terrorist and accuses his family of his bad upbringing, which serves as a response to public demands of accountability. In other words, Erdoğan insinuates that Elvan does not deserve accountability because he is a disobedient son of the state. However, the doings of Erdoğan's rally speech are not limited to this. The conceptual framework of performative utterances (Austin 1975) — through Butler's (1997, 2003) revisions and Stanley Cavell's (2005) and Marianne Constable's (2014) contributions to the literature — present us with a lens to register how Erdoğan's rally speech (re)constructs the mythical imaginary of the Turkish state as he speaks, and how this imaginary manifests onto himself, a process which I refer to in the chapter as *stately performatives*. Erdoğan's *stately performative* exposes the Turkey-specific imaginary of the state, the *father-state* which is originally associated with Turkey's founding father M. K. Atatürk and, thus, was utilised as a founding myth for a united Turkish nation. The significance of the figure of the body and its function in manifesting the state and its powers becomes apparent as Erdoğan evokes the *father-state* through his own body. The chapter expands on Erdoğan's *father-state* performance; the assumptions it bears and the ways in which he utilises the *father-state* myth to reconsolidate the troubled unity of the Turkish state after the Gezi protests and a series of political scandals. As I read Erdoğan's *stately performative* of the

*father-state* as an attempt to reconsolidate both the unity of the mythical imaginary of the Turkish state and his power as the *father-state*, I argue that despite being an authoritarian performance, Erdoğan's speech indicates the imaginary construct of the state while excluding Elvan and his family from its imagined unity.

Inquiring into the state and its violence from the perspective of its mythical construction, then, enables us to comprehend the meanings behind the violent acts of refusal. In Chapter 3, this is how I read the People's Front's hostage-taking of the then head prosecutor of the Elvan case. The violence of the hostage-taking responds to the violence of the state and its unaccountability. The People's Front's hostage-taking action exposes the limits of the state, and its juridical system, while the hostage-takers mock the state power in its inability to bring justice. Although the hostage-taking is an act that contests the state and its violence, I register appropriation of state power within the performance of this violent refusal. The hostage-taking action's refusal of the state and its violence manifests in the form of assimilation of the state's killing and punishing powers. In that regard, it is possible to recognise an interplay between the state, or rather the imaginary powers of the state, and the demands of the hostage-takers. Furthermore, what makes the hostage-taking action possible is the deadly devotion of the People's Front militants who know well that the action will bring their death. Their deadly devotion, which for some is an admirable thing, troubles me. The militants who carry out the hostage-taking and Berkin Elvan come from similar backgrounds — working-class, urban-poor young men — which the state subjectifies as suspects. They are the potential disobedient sons of the *father-state*, and thus, more likely to be subjected to the deadly violence of the state. What I notice in their deadly devotion to carry out the hostage-taking is the assimilation of this deadly fate attributed to them by the state. I consult the literary figure of *Antigone* to comprehend the meanings behind the militant's self-sacrificial devotion to bring justice to the dead while asking *why must the militants die?*

Following this, in Chapter 4, I present a reading of the legal process of the Elvan case through Franz Kafka's famous parable 'Before the Law', in order to address the issue of repetitive failure of accountability in state violence cases. I understand the prolonged legal process of the Elvan trial as a legal version of the initial violence which exposes a common, but yet to be explored, operation of law in state violence trials. While expanding on how police violence transforms into legal violence, I notice that while the legal process dismisses the responsibility of the state and delivers one bad cop, it also hides the perpetrator police officer from appearing before the court. This raises the question, *who is on trial?* Kafka's parable, and its resonances within the critical scholarship, expose this ambiguity which manifests in terms

of the Elvan family's expectation from the law and how they are kept waiting before the law in anticipation of justice. Different to the common readings of legal violence which operate through uttering a decision in the form of a judgement, it appears that the state violence trials rather suspend delivering the judgement and hold the ones who were subjected to state violence awaiting in anticipation. This is how state violence trials become never-ending, life-long battles for those who demand accountability from the state.

Finally, I would like to say a few words about my usage of fiction throughout the thesis. Although neither the methodology nor the content of this inquiry belongs to the rich scholarship of law and literature, the literary works that are mentioned in this thesis have led me to navigate between the borders of what is fiction and what is real, and to elaborate on the transgressions between those two realms. In that regard, the literary works guided me to comprehend the passage between the mythical imaginary of the state and its concrete, deadly effects. This thesis is my invitation to legal scholarship to focus on the blurred space between the imaginary and deadly reality, that space between the lines, beyond the written and spoken which belongs to the ghosts of state violence which keeps us haunting. To end with Avery F. Gordon's (2008) words, 'The task then remains to follow the ghosts and spells of power in order to tame this sorcerer and conjure otherwise' (28).

## Chapter 1: ‘The Murderer State Will be Held to Account’

It is 12 March 2014. Berkin Elvan’s coffin floats on the streets of Okmeydanı, Istanbul.<sup>11</sup> On the shoulders of the sea of people, Elvan wanders through the streets of the neighbourhood, where he grew up, and where he was hit by a police tear gas canister on 16 June 2013 during the Gezi protests. Elvan’s coffin was draped in a red flag and covered with carnations. The red flag, without the crescent moon and star which is the constellation of the Turkish flag, is a symbol of leftist politics. For those who had attended the funeral ceremony, it served as an indication, a location, a disposition of a political stance under the sacredness of a funeral ceremony.

Once he was announced dead, Berkin Elvan joined the ranks of ‘Gezi martyrs’ who were killed either by the police or by government supporters during the protests.<sup>12</sup> Consequently, Elvan’s funeral rekindled the anti-governmental and anti-state disposition of the Gezi protests. The main arteries of Istanbul were shut down by protesters who had been marching towards the funeral ceremony whilst, simultaneous protests had taken place across Turkey. Chants filled the air; ‘Berkin’s murderers are the AKP police’, ‘Erdoğan, killer’, ‘The murderer state will be held to account’, ‘Berkin Elvan is immortal’.<sup>13</sup> Shops were closed, thousands escorted the funeral cortege traveling in the streets of Istanbul from Okmeydanı Cemevi, to Şişli mosque and lastly concluding at the Feriköy cemetery.<sup>14</sup> The picture of Berkin Elvan, which was placed in front of the coffin, gazed at the crowd from above, from the heavens as he is often illustrated among other Gezi martyrs. On top of his picture was written; ‘Berkin Elvan is immortal’ and below, ‘We will call to account’. Both statements end with exclamation marks. They are not only signs of emotional states of despair, or anger, but rather they are signs of warning, ‘We *will* call to account!’ (my emphasis).<sup>15</sup>

---

<sup>11</sup> ‘Thousands Bid Farewell to Berkin Elvan’. 2014. *Bianet*, 12 March. Accessed 28 September 2021. <http://bianet.org/english/human-rights/154119-thousands-bid-farewell-to-berkin-elvan>

<sup>12</sup> Those referred as Gezi martyrs are Mehmet Ayvalıtaş, Abdullah Cömert, Ali İsmail Korkmaz, Ethem Sarısülük, Medeni Yıldırım, Ahmet Atakan, Hasan Ferit Gedik and Berkin Elvan.

<sup>13</sup> Berkin’in katili AKP’nin polisi, Erdoğan katil, Katil devlet hesap verecek, Berkin Elvan ölümsüzdür.

<sup>14</sup> ‘Funeral of Turkish Boy Berkin Elvan Brings Thousands to Istanbul Streets’. 2014. *The Guardian*, 12 March. Accessed 28 September 2021. <https://www.theguardian.com/world/2014/mar/12/funeral-turkish-boy-berkin-elvan-thousands-istanbul-streets-protests-tear-gas-canister>

<sup>15</sup> Throughout the thesis, I will signal any alterations made on citations.



**Figure 1:** Funeral Ceremony of Berkin Elvan  
© Emrah Gurel/AP<sup>16</sup>

I consider this claim, ‘We will call to account’ within the context of the cross-generational leftist chant ‘The murderer state will be held to account’ that communicates the public response in Turkey after each act of state killing. It is an oath that is uttered from generation to generation among Turkey’s political dissidents, like passing the torch from the older to the younger: ‘The murderer state will be held to account’. It is a timeless chant which connects its past and future utterers within the present. As the chant travels through time, it locates Berkin Elvan’s death within the history of state killings in Turkey. On the other hand, this history is also the history of resistance, which often takes the form of demanding accountability, as the chant, ‘The murderer state will be held to account’ suggests. In that regard, the chant indicates a continuity, not only signifying a continuity of state killings but also of contestation over the state’s accountability. As the double-folded history of state violence and demands for accountability intertwine on the subject-bodies, it transforms the subjects into a site of contestation. As I discuss throughout the thesis, Elvan’s name acquires many meanings – from an ill-fated child to a terrorist, from a terrorist to a revolutionary martyr – all of which signify different forms of contestation over processes of accountability, as well as associating him with others whose names bear the same meanings and hence, recalls their memories.<sup>17</sup>

---

<sup>16</sup> Obtained by the permission of Voanews. See; Jones, Dorian. 2014. ‘Thousands March in Turkish Teen’s Funeral’ *Voa News*, March 12. Accessed 28 September 2021. <https://www.voanews.com/a/thousands-march-in-turkish-teens-funeral/1869686.html>

<sup>17</sup> Some other chants shouted during Elvan’s funeral associate his killing with the past state killings in Turkey and locate him as a figure in a leftist mythology, such as the chant ‘Fifteen-year-old sapling, Berkin Elvan’ which recalls the underaged revolutionaries of 1980s who were hanged by the military coup regime of the time, as they are commonly referred as ‘saplings’ in Turkey’s political culture.

As the call for accountability after Elvan's killing bears memories of the past, it is heavy in anticipation of bringing justice by holding the state accountable, not only for Elvan but for all the past state killings. In that regard, accountability for Elvan's killing, in terms of its demand and its performance, gains a historic significance as it conveys the possibility of rupturing the continuity of state violence and its unaccountability. This exposes something about the notion of state violence: that it never refers to a single incident; that it recalls the past and carries a bitter hope for the future which materialises through demands of accountability for that particular incident. The chant 'The murderer state will be held to account' communicates this hope while indicating towards a historic perpetrator, the state. At this point, the chant, 'The murderer state will be held to account' reveals a dilemma that demands accountability from the perpetrator. In that formulation, the state appears not only as the historic murderer, but also is expected to carry out a historic prosecution that would rupture the doings of its murderous self.

Before elaborating on the demands of accountability, in this chapter, I focus on the state imaginary that surrounds the killing of Berkin Elvan, and hence the notion of state violence. As the chant, 'The murderer state will be held to account' bears a significant claim that the police violence which had led to Elvan's death is indeed an act of state violence, it signifies the state as the murderer. Although, it can be argued that the chant aims to display the linkage between police and the state through the act of violence, I suggest it rather insinuates a murderous subject beyond the police officer, a state-subject that acts similarly to a human subject; a 'murderer state' which I read as the omnipotent and omnipresent imaginary of the state. With the aim of disclosing the state imagery surrounding the notion of state violence, I first explore the manifestation of the state through elaborating on the moment of Elvan's encounter with the police. In doing so, I disclose the significance of the body as a medium that merges the police and the state. Following this, I present a conceptual discussion on the bodily imagery of the state to unpack the assumptions it bears, especially regarding state violence. Finally, I return to police violence once again, this time through the lens of Walter Benjamin, to present the conceptual framework to comprehend the violent manifestation of the state imagery through police violence.

### **Encountering the Police, Encountering the State**

In this section, while introducing Elvan's deadly encounter with the police, I set the parameters of my investigation. I consider the encounter as the moment when police violence becomes synonymous with state violence. In reference to the chant, 'The murderer state will be held to

account', I begin with inquiring into the manifestation of the state. Hence, while introducing the encounter, I explore the question, *What renders police violence as state violence?* To clarify, by posing this question, I neither object to registering police violence within the notion of state violence nor aim to propose a framework for their distinction. My objective here, and throughout the thesis, is to expose myths and assumptions that encircle the notion of state violence, which not only set the limits of its conceptualisation but also reflect on the demands and practices of its accountability, or rather the lack thereof. Thus, in order to set the parameters of my investigation, I begin with unpacking the initial moment when state violence becomes intelligible. As I demonstrate below, state violence always manifests through an action of a human subject. Furthermore, there is not a single action within the vast repertoire of state violence that is independent from other forms of violence. This is exactly the reason for the multitude of forms and facets of state violence. This is also the case in the killing of Berkin Elvan, in which state violence manifests in the form of police violence. As mentioned above, there is always someone, a material person, or a subject-body, who executes these actions, as I read them, the one who claims, and acclaims, the state and act on its behalf. In my inquiry, I am particularly interested in this claim, in the myths and assumptions this claim bears while enacting the state and its violence. Additionally, I am also interested in how such manifestations reflect on the demands and processes of accountability, as the notion of accountability is then understood and positioned in proximity to such claims of the state and its violent manifestations. To begin my inquiry, however, in this section I introduce Elvan's encounter with the police to unpack aspects that render this violent encounter as a state encounter.

Berkin Elvan was hit by a gas canister in the early morning of 16 June 2013 during the nationwide protests. According to the witness testimonies,<sup>18</sup> which I discuss further in Chapter 4, the riot police were located on the main street just a few metres away from the side street, from where Elvan intended to cross to reach to the bakery on the opposite side of the main street. We also learn from the witness testimonies that the police had been teasing a small group of protestors by shooting gas canisters horizontally throughout the night, due to which the protestors ended up sheltering on the corner of a side street, where Elvan attempted to cross. As soon as he attempted to cross the street, he was hit in the head with a tear gas canister. Eyewitnesses carried him to the nearest hospital where he stayed in coma for almost a year

---

<sup>18</sup> Berkin Elvan Indictment: Republic of Turkey, Istanbul Office of the Chief Public Prosecutor, Investigation no: 2013/155787, Case no: 2016/42124, Indictment no: 2016/4484.

before losing his life on 14 March 2014. Despite the claims of high state officials, which I discuss in Chapter 2, Elvan was not participating in the protests at the time he was injured, but neither did it matter. In the context of nationwide protests, the riot police targeted anyone in the streets with tear gas, water cannons and rubber bullets.<sup>19</sup> According to the Amnesty International's report on the Gezi Park Protests (2013), 'by July 10 there had been more than 8,000 injuries at the scene of demonstrations' (6) which are caused by excessive use of force by the police. The report also mentions the excessive use of tear gas: 'The government announced that 130,000 gas canisters had been used during the first 20 days of the protests alone, equivalent to a year's supply' (19) and notes that not only was tear gas was used 'against protestors fleeing police and apparently randomly against potential demonstrators and bystanders alike at the scene or close to demonstrations' but also that 'police officers were repeatedly seen firing tear gas canisters horizontally at suspected demonstrators as a weapon. A significant proportion of persons injured at the scene of demonstrations received injuries through being struck by gas canisters, many of them fired at close range' (20).

In addition to this general atmosphere of violence, there is something particular in the violent scenario which struck Berkin Elvan, which is related to the location of this encounter. Elvan's encounter with the police took place in Okmeydanı, a working-class neighbourhood that is located just below of Taksim Square and Gezi Park where the nationwide protests originated. At the time, the police violence was intensified around the periphery of the park, which was occupied by the protestors; moreover, due to Okmeydanı's reputation as a leftist neighbourhood, its residents had always been subjected to a particular regime of violence.<sup>20</sup> If according to the police, all protestors were potential suspects, in Okmeydanı everyone in the streets were potential protestors. In the following chapters I touch on how Okmeydanı's reputation plays a role within the interplay between demands of accountability and political and legal responses to such demands. For now, it may suffice to note that Okmeydanı as a site indicates intensified police violence, due to which, I suggest, Elvan's mundane task of fetching fresh bread from a bakery was transformed into a deadly police encounter.

---

<sup>19</sup> See Amnesty International, 2013.

<sup>20</sup> Deniz Yonucu published a commentary on this particular regime of violence after the death of another Okmeydanı resident, Uğur Kurt, who died due to the clashes between the riot police and the protestors in Okmeydanı, just a few months after the death of Elvan. In her commentary, Yonucu reads Okmeydanı as a space of exception where the regime of violence and suppression that normalises the capitalist state is visible and intelligible. (Yonucu 2014). In relation to this, in an earlier work together with Zeynep Gönen, Yonucu presents an analysis on the urban poor neighbourhoods and their systematic criminalisation in relation to the neoliberal policies in Turkey (Gönen and Yonucu 2012). In that regard, Okmeydanı's regime of violence can be understood though this double-bind: as a space where physical state violence is intensified and as a space which automatically marks its residents as criminals.

To begin with unpacking the meanings behind this regime of violence, Louis Althusser's famous hailing scenario can be illuminating. Louis Althusser (2014 [1871]), in his essay titled 'Ideology and Ideological State Apparatus' presents a hypothetical scene in which the police officer hails; 'Hey, you there!' (264). According to Althusser's scenario, as the hailed individual turns around, and so as the hailed recognises the hailing, 'he becomes a subject' (ibid.). Althusser calls this process *interpellation*, and it plays an important function within his grand analysis on ideology and its operation through state institutions, as he concludes that 'all ideology hails or interpellates concrete individuals as concrete subjects' (ibid.). Surely Elvan's encounter with the police is significantly different from Althusser's fairly naïve hailing scenario; nonetheless, I suggest that it allows us to comprehend the dynamic between the police and Elvan, as a resident of Okmeydanı. However, to clarify my position here, rather than suggesting a successful process of *interpellation*, I approach Althusser's hailing scenario from its cracks to conceptualise how the state is conjured through the process of *interpellation*, in other words, through an expectation of successfully *interpellating* the subject, which I refer to as the state's expectation of *interpellation*. Below, I disclose the operation of this expectation by following the critiques posed by Butler (2011 [1993], 1997) and Žižek (2008) in order to expose the assumptions that the process of interpellation bear.

To return to the scenario, after presenting his notion of *interpellation* in one simple gesture – 'Hey, you there!' – Althusser adds in the footnotes that, '(h)ailing as an everyday practice subject to a precise ritual takes a quite "special" form in the policeman's practice of "hailing" which concerns the hailing of "suspects" (264 n.18). Following this, Althusser not only suggests that 'ideology hails or interpellates individuals as subjects' but also suggests that 'individuals are always-already subjects' (265). Rather than discussing this within the specific scenario of police officer's hailing, Althusser provides a Freudian explanation to exhibit how individuals are already marked by a 'familial ideological configuration' even before birth (ibid.). In *the Sublime Object of Ideology* (2008) Slavoj Žižek humorously criticises Althusser's tautological proposition, as he writes in reference to Michel Pêcheux;

the subject as such is constituted through a certain misrecognition: the process of ideological interpellation through which the subject 'recognizes' itself as the addressee in the calling up for the ideological cause implies necessarily a certain short circuit, an illusion of the type 'I was already there' [...] the short circuit of 'no wonder you were interpellated as proletarian, when you are a proletarian' (xxv)

Interestingly, if we cross-read Althusser's tautological position with his former remark on the hailing of suspects, then we reach an argument which roughly suggests that the police hail the suspects who are already suspects. This may explain the police's behaviour during the Gezi protests in general, and in Okmeydanı specifically. It is possible to argue that according to the police its residents were already suspects, which perhaps explains the police's already violent presence in the early morning the day Elvan was injured. It is possible to suggest that for the police Elvan was already a suspect once he stepped outside, an act that unconsciously resists the police's violent regime. This reading reveals that police violence, or any violence issued in the name of the state, simultaneously aims to *interpellate* subjects. Then, echoing Žižek (or rather Pêcheux), with a nuance: no wonder Elvan was portrayed as a suspect after his death by high state officials and state institutions, when he was already a suspect. Although I unpack this further throughout the thesis, at this point it is important to stress that the efforts to *interpellate* Elvan as a suspect by the various state officials and institutions, as a terrorist-like boy who was born to be a terrorist, do not necessarily indicate a successful process. Rather, they provide a lens through which to comprehend the events following Elvan's death as a contestation between the state's attempt to *interpellate* Elvan and the countering political and legal attempts of its refusal.

Another aspect I would like to disclose through Althusser's hailing scenario is the role of law. Although law appears to have a significant role within Althusser's hailing scenario, he fails to provide a reading on this matter. In *Bodies That Matter* (2011 [1993]) Judith Butler associates the process of *interpellation* to law; '[t]here is the policeman, the one who not only represents the law but whose address "Hey you!" has the effect of binding the law to the one who is hailed' (81) and exposes its one-sidedness: 'Althusser conjectures this "hailing" or "interpellation" as a unilateral act, as the power and force of law to compel fear at the same time that it offers recognition at an expense' (82). Later in *The Psychic Life of Power* (1997) Butler reads the hailing as 'a demand to align oneself with the law' (107). Moreover, Butler asks why the subject would betray themselves and allow themselves to be reduced by the gesture of turning 'toward the law, against the self' (108). In that regard, turning to the police's hailing is a gesture which does not only results in misrecognition of the self as Žižek puts it, but also, as Butler observes accurately, it is 'a scene both punitive and reduced' (106). This is something, I discuss further in as Chapter 4 through a detailed analysis of the trial concerning Berkin Elvan's killing. However here I would like to note that what I refer to as the state's expectation of *interpellation* is also a legal claim that is enacted by police violence. In that regard, the law

becomes one of the main sites of contestation, especially when state violence is considered, and this association becomes intelligible during the legal processes of accountability.

According to Althusser, however, *interpellation* is the only, and somewhat inevitable, outcome of the hailing scenario, in which the addressee gets *interpellated*, or subjectified, as they turn. Althusser does not elaborate on other alternatives and possible outcomes for the sake of illustrating how ideology *interpellates* the subject. As a result, he conditions the subjects to internalise their subjection, which Žižek refers to as misrecognition. In addition to the points discussed above, however, the inevitability of this scenario reveals a curious assumption. Althusser gives an unusual explanation for the inevitability of *interpellation*, for him the act of turning to the hailer is not only automatic but almost a telepathic response in which hailing always finds its right addressee and makes the addressee turn. As he writes, '[e]xperience shows that the practical telecommunication of hailings is such that they hardly ever miss their man: verbal call or whistle, the one hailed always recognizes that it is really him who is being hailed' (264). Although Althusser adds that this 'cannot be explained solely by "guilt feelings"' (ibid.), as he fails to provide any other explanation to this phenomenon, Butler asks; 'How and why does the subject turn, anticipating the conferral of identity through the self-ascription of guilt?' (1997: 107).

If Althusser's hypothetical scenario attributes a limited agency to the hailer, as someone enacting the ideology and instigating the process of *interpellation*, it completely pacifies the addressee. Butler's persistence in using the notion of guilt, despite Althusser's note against it, can be comprehended in this regard because she criticises Althusser's erasure of agency. Butler points towards the disobedient subjects who defy the legal command in various forms. As they put it, 'the law might not only be refused, but it might also be ruptured, forced into a rearticulation that calls into question the monotheistic force of its own unilateral operation (2011: 82). In *Bodies That Matter*, by presenting an analysis through gender subversive practices of drag, Butler indicates the parodic responses to the law's command which 'calls into question the legitimacy of the command' (ibid.) Such parodic responses occur through a repetition that is as Butler puts it, 'a repetition of the law into hyperbole, a rearticulation of the law against the authority of the one who delivers it' (ibid.). I present a detailed analysis of this repetition in Chapter 3. However, if we return to the hailing scenario then, Butler's criticisms expose what I refer as the state's expectation of *interpellation* which indicates the police's expectation from the addressee to obey, and to turn to the law. This, as Butler indicates, also requires the addressee to accept their own guilt and recognise the self as a suspect. As mentioned above, I discuss its implications on the Elvan case further in the following chapters.

However, it is necessary to direct a question here: if the inevitability of *interpellation*, in the form of a call and answer, is not something out of guilt for Althusser, is it due to the supernatural merits of ideology that the hail, or the hailer, always finds its target and successfully subjugates them? As Althusser's *interpellation* operates in mysterious ways, it assumes a mysterious force which not only always finds its right addressee but also to which the subjects always respond in submission.

As Althusser's hailing scenario does not provide further guidance on its mysterious operation, to unpack this I consult Jean Genet's encounter with the police: 'A man stumbled against me [...] It was a coast-guard of about thirty. Armed with his rifle [...] In submitting to the whims of the coast-guard I was obeying a dominating order which it was impossible not to serve, namely, the Police' (Genet 2019: 152) In *The Thief's Journal* Jean Genet describes his encounter with a coastguard in these words. I consider Genet's – the thief's – encounter as a guide to exposing what I referred to above as the mysterious force that, as Althusser proposes, always finds its addressee, and successfully subjugates the subject. I read the mysterious operation of *interpellation* as something related to the dominating order that Genet's thief, recognises through the coastguard, which makes him submit. It is possible to register Genet's encounter as a supporting example to Althusser's *interpellation*, in which Genet the thief cannot resist obeying. On the other hand, Michael Taussig in *The Nervous System* (1992), reads Genet's encounter with the police as something exposing the state fetish (134-136). In one sentence Taussig summarises *state fetishism* as, '[t]his peculiar sacred and erotic attraction, even thralldom, combined with disgust, which the State holds for its subjects' (111). Taussig argues that state fetish is 'so studiously, so dangerously, ignored by the great theorists of the poetics of the commodity-fetish' (ibid), among whom Taussig lists Walter Benjamin as I discuss further in this chapter. But he suggests that Genet's encounter brings 'the fetish character of the modern State into a clear and sensual focus' (133).

It is necessary to note that Taussig's notion of state fetish has to do with the homoerotic aspect of Genet's encounter which almost suggests that it is the thief's submissive desire that manifests the state.<sup>21</sup> In that regard, in his own words, 'what the notion of State fetishism directs

---

<sup>21</sup> Following the encounter, the thief performs a sexual act with the police officer. Although it is not clear whether it is a direct order from the officer, nonetheless, the thief feels the pressure of the dominating order to 'serve'. It is possible to read the fetishisation of an omnipotent and omnipresent power in Genet's writings, which often translates into sexual desire and manifests through obscene sexual acts. In *Our Lady of the Flowers* (2019 [1943]), Genet describes a sexual act 'with the King of Rumania' as a sexual act with ten million people which the King of Rumania represents (203). It is, also, possible to note that the dominating order that Genet fetishizes is male as Genet writes only on male homosexual relations. Although I do not present a gender-based reading, the fact that Genet's state fetishization takes the form of fetishizing male bodies is something related to the paternal state imagery which I present in the following chapter.

us to is precisely the existence and reality of the political power of this fiction' that is 'the fiction of the State – the big S' (113). Moreover, Taussig not only reads the state as a fiction, but as he cross-reads sociology in reference to Durkheim with sorcery, Taussig suggests that the state is an impure sacred (114), a bad fetish: the *maleficium* (118-119).

Although Genet's encounter with the police differs significantly from Elvan's, nonetheless, I consider it as an encounter that illuminates the question, *What renders police violence as state violence?* As Genet the thief's, encounter surpasses the two encountering material bodies, namely the thief's (Genet) and the police officer's, it is an encounter through which, in Genet's words, 'a dominating order' manifests. In Taussig's reading, the figure of the body plays a significant role in recognising, and fetishizing the state, through the body of the police officer. Taussig points out to the gears and emblems that are embellished on the uniform of the police and suggests that they signify a higher power from which the police extract authority. In reference to Durkheim, Taussig concludes that the policeman stands in front of the thief as a totem, a sacred power (139). As a result, Taussig explains, the thief recognises the police officer not as an individual, but in an institutional form:

but there's something else, more metonymic, more carnal, tactile and sensuously material, which is central here – and this is the issue of fetish, of the State with its big S rearing, of the Dominating Order as that which oscillates, like Durkheim's 'society,' between *res* and *deus*, between thing and God, with a carnal and ritualised relation to objects, as with the totems. Here the policeman and his gear are precisely that – (135).

In the quote above, Taussig, proposes that the state gains a material body through the symbolic function of gears and emblems on the police uniform which transform the police officer into a totem. At this point, if we return to Elvan's encounter, as it took place during the Gezi protests, and consider the gears of the Turkish riot police – with a helmet and a full body armour, armed with batons and weapons, shooting tear gas and rubber bullets – it becomes evident that this totem conveys a certain message. At the encounter with Elvan, the police directly communicate violence. Although violence is not what Genet the thief highlights in his encounter, nonetheless he recognises it almost immediately: 'It was a coast-guard of about thirty. Armed with his rifle' (152). If by guessing the police officer's age, the thief first acknowledges him in a material form, as a human and a mortal being, by noticing his rifle the thief recognises the possibility of violence which the police officer carries on himself, as if it is an embellishment. In that regard, I suggest, what Genet recognises as 'a dominating order' through the police officer's

material body is also the potential of violence. At first glance such a reading may appear as a shift from Taussig's notion of state fetishism due to the lack of carnal, homoerotic aspect which is the highlight of the Genet's thief's encounter. On the contrary, however, Taussig notes that violence, combined with reason, are elements of state fetishism; he writes, '*it is precisely the coming together of reason-and-violence in the State that creates, in a secular and modern world, the bigness of the big S*' (116). I read Taussig's emphasis on the combination of reason and violence in relation to the chant 'The murderer state will be held to account', which, as I mentioned before, attributes omnipotent and omnipresent powers to the state and signifies an evil mastermind.

If Taussig, through Genet, presents an account of a police encounter from the perspective of the thief, Althusser's hailing analogy presents the encounter from the perspective of the police officer, who carries out the violence of *interpellation* in the name of the law and, in return, demands obedience and submission from the addressee. Hence, when Genet the thief's encounter is cross-read with Althusser's hailing scenario, it becomes apparent that any form of police hailing carries a legal claim and demands a double-folded recognition from the addressee. This double-folded recognition is intelligible in Genet the thief's encounter in which the thief first recognises the dominating order, in other words *the State*, and this is followed by his own recognition as the suspect, in other words, as the thief. However, as argued above, this scenario rather indicates the state's expectation and, furthermore, Taussig's reading of the state as a fetish allows us to recognise the imaginary construction of this scenario which manifests through the material body of the police officer. I suggest that this is also the case regarding Elvan's encounter: that the state manifests through the material body of the police and thus, what renders police violence as state violence is founded upon their bodily overlap, when the imaginary body of the state manifests through the material body of the police officer.

Moreover, this cross-reading not only exposes the imaginary construction of the state but also reveals that it does more than depend on the fetishes of the thief, or the hailed; it also manifests through the enactment of the ones who claim to act and speak on behalf of the state. Jacqueline Rose (1996), in *States of Fantasy*, provides a psychoanalytic explanation for this phenomenon:

If the state has meaning only 'partly as something existing', if it rests on the belief of individuals that it 'exists or should exist', then it starts to look uncannily like what psychoanalysis would call an 'as if' phenomenon. You mould your acts and gestures to

a persona that deep down you know isn't really there [...] The modern state enacts its authority as ghostly, fantasmatic, authority (8-9).

Following this, Begoña Aretxaga (2005) in collection of essays on the fantasy of the state and terror, highlights that, 'To look for state effects is also to follow the ways in which those identified as the state enact their fantasy vis-à-vis those others it considers its enemies' (263). If the state is an imaginary construct, a product of a collection of fetishes and fantasies, then how to understand its dominance in every aspect of our lives? Yael Navaro-Yashin in *Faces of the State* (2002), whom Aretxaga references throughout her work, presents a Turkey-specific analysis of the manifestation of the state imaginary. Navaro-Yashin agrees with Taussig's conceptualisation of state fetishism, and she presents some everyday practices as practices of state fetishism, which she refers as 'everyday practices of ritualistic exaltation of the Turkish state' (158). Although according to Navaro-Yashin state fetishism is shared among many in Turkey – 'pan-Turkists, secularists, Islamists as well as leftists' – she concludes that state fetishism fails to explain 'mundane everyday criticism of statespeople and ridicule of the state' (ibid.). By bringing Slavoj Žižek's interpretation of Lacanian *fantasy* to understand this phenomenon, Navaro-Yashin proposes that although people are aware of the state's nonexistence, they still live as if it exists. She writes: 'The state remains as long as ordinary people are able to pretend that it exists in their everyday practices of life [...] As long as what I call *the everyday life of statecraft* is maintained, the state is reproduced' (179). Navaro-Yashin reaches the conclusion that 'the signifier "state" can remain intact despite public consciousness against it, because a material and tangible world has been organised around it' (171). Perhaps, it is possible to recognise something similar happening in the context of state violence, that the interplay between demands of accountability and political and legal responses to such demands contribute to the making of the deadly subject of the state, which I argue throughout the thesis.

In the chapter in which Taussig introduces the notion of state fetishism, he gives Thomas Hobbes's *Leviathan* as an example. '[A]nd what do I mean by State fetishism?' he asks and responds, 'I mean a certain aura of might as figured by the Leviathan in Hobbes' rendering as that "mortal god"' (111). Following this lead, in the next section I present a reading of Hobbes's *Leviathan* to disclose the meanings and assumptions attributed to the bodily imaginary of the state which enable this manifestation. An analysis of the *Leviathan* provides the conceptual lens to comprehend how the bodily overlap between the police officer and the state is possible with reference to modern political and legal constructions, and helps us with unpacking the claims such constructions bear in relation to state violence and unaccountability.

### **Leviathan's *Body Politic***

The discussion above on Elvan's encounter with the police discloses the significance of the figure of the body in attributing certain forms of violence to the state. Its significance is not only limited to the body of the police officer, as the actor or enactor of state violence, but also, and perhaps more significantly, the material body appears as a medium through which the state manifests itself. As Taussig discloses through his totem-like reading of the police officer, it becomes evident that what enables this manifestation is the police's embodiment of the state. In this section, as I inquire into what makes this embodiment possible, I suggest the bodily imaginary of the state, which is commonly referred to as the *body politic*, enables this embodiment and manifestation of the state through an overlap of bodies: the material body of the police and the *body politic* of the state. To unpack this overlap further, in this section I diverge my focus from the material body of the police towards the bodily image of the state.

The literature on the *body politic* dates back to Ancient Greece. Claire Richter Sherman (1995) suggests that the analogy of the *body politic* was first coined by Plato in the *Republic* and in the *Laws*, and developed further by Aristotle in the *Politics* (217). Furthermore, medieval political theorists Kate Langdon Forhan and Cary Joseph Nederman (2013) demonstrate the political interest in defining a *body politic* during the medieval times, including Christine de Pizan's *The Book of the Body Politic* (1994), which was written between 1404 and 1407 during the Hundred Years War between France and Britain and remarkably carries the matter to its title. In a nutshell, the common formulation of the *body politic* signifies an overlap between the political entity, whether it is the polis or the state, and the sovereign. Regarding this overlap, in *The King's Two Bodies*, the medieval historian Ernst Kantorowicz (1997) presents a detailed account of the theological foundations of the *body politic* analogy through the two bodies of the king: the fictitious body of the king as an office, in other words his public personae, and the material one of the king as a private person. To clarify, my aim here is neither to present a discussion on the notion of *body politic per se* nor to investigate its theological foundations. Instead, I am interested in exposing what the mythical bodily imaginary of the state conveys to us when it is embodied by police and performed through police violence. To do so, and following Taussig's lead, in this section I present an analysis of Thomas Hobbes's *Leviathan* (1991 [1651]), which is undeniably one of the most impactful works on state theory as it presents a model for the ideal modern (Western) state while replacing its theological imaginary

power with a secular one.<sup>22</sup> As I unpack the meanings of the state's bodily imaginary through *Leviathan*, I disclose that this bodily image carries a certain conceptualisation of the state which signifies a unified, omnipotent and omnipresent political entity. Perhaps what Genet's thief recognises as the dominating order is the embodiment of these attributes which are embedded within our perception of the modern state.

To begin with, the cover of the 1651 edition of Hobbes's *Leviathan* shows a man holding a sword in one hand and a sceptre in the other; his body consists of a multitude of people (lxxiv). The English edition of *Leviathan* begins with its bodily description:

For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE, (in latine CIVITAS) which is but an Artificiall Man; through of greater stature and strength than the Naturall, for whose protection and defence it was intended: and in which, the Sovereignty is an Artificiall Soul, as giving life and motion to the whole body: The Magistrates, and other Officers of Judicature and Execution, artificall Joynts; *Reward* and *Punishment* (by which fastned to the seate of the Sovereignty, every joynt and member is moved to performe his duty) are the *Nerves*, that do the same in the Body Naturall; The *Wealth* and *Riches* of all the particular members, are the *Strength*; *Salus Populi* (the peoples safety) its *Businesse*; *Counsellors*, by whom all things needful for it to know, are suggested unto it, are the *Memory*, *Equity* and *Lawes*, an artificall *Reason* and *Will*; *Concord*, *Health*; *Sedition*, *Sickness*; and *Civill war*, *Death*. Lastly, the *Pacts* and *Covenants*, by which the parts of this Body Poltique were at first made, set together, and united resemble that Fiat, or the *Let us make man*, Pronounced by God in the Creation (9-10)

---

<sup>22</sup> For the purposes of this thesis, I limit my reading of the *Leviathan* to the first two parts in which Hobbes famously discusses human behaviour (which he calls 'of man') and the political organisation ('of common-wealth'). The other two sections are related to the theological aspects of the *Leviathan*. Hobbes strongly argues that *Leviathan* should be a 'Christian common-wealth'. However, James R. Martel in *Subverting the Leviathan* (2007), while focusing on the theological second half of the *Leviathan*, discloses how Hobbes's Leviathan diverges from the Christian tradition. Martel concludes with a provocative argument challenging the common reading of the *Leviathan* and suggesting that due to Hobbes' break with the Christian tradition, and his commitment to individuality, the text can be re-read against authoritarian sovereignty. Furthermore, in *Divine Violence* (2012) Martel provokes the existing scholarship with an alternative reading of Hobbes's *Leviathan*, as an example of 'an alternative and non-totalizing form of sovereignty' (9). Martel's analysis is again based on the second part of the *Leviathan*, which presents a theological conceptualisation of the political organisation. In this research I am less interested in the literal theological analysis than I am in unpacking the use of violence in modern, secular, legal and political constructions of the state. Although I agree with Martel's analysis of *Leviathan*'s break with the Christian tradition, which I read as the secularisation of the *body politic*, I disagree with his conclusion on the Leviathan's alternative reading.

What is striking in Hobbes's bodily description of Leviathan is that it does not directly overlap with the sovereign, but rather other state institutions and functions do play important roles in its existence and operation – although, as the quote above suggests, sovereignty plays the main crucial role to animate it. However, the importance Hobbes attributes to the sovereign complicates the picture, which can also be traced in his differentiation between the fictitious (*Artificiall*) and material (*Naturall*) bodies. In his own words, Hobbes aims to describe the 'Nature of this Artificiall man' (10), however, the nature of this fictional body is not always clear. Hobbes establishes the relationship between the *Artificiall* (fictitious), and *Naturall* (material) bodies with a definition: 'When they [words and actions] are considered as is owne, then is he called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then is he a *Feigned* or *Artificiall person*' (111).

In *From Humanism to Hobbes*, Quentin Skinner (2018) provides an insight into Hobbes's personification of the state through presenting a theoretical background on the matter.<sup>23</sup> Skinner suggests that Hobbes's formulation of a natural and artificial person and the issue of representation is grounded in a Ciceronian understanding of *persona civitatis* (12-440)<sup>24</sup> Skinner presents that in *De officiis* Cicero suggests that the magistrate bears the person of the *civitas* or the state (14). Skinner reads Hobbes's formulation of an artificial and natural person as 'his theory about the sovereignty of the *civitas* or state' (12). Furthermore, in reference to Quintilian's *Institutio oratoria*, Skinner discloses that there is a performative logic behind the relationship between the artificial and natural person. According to Skinner, Quintilian suggests the personification of things by 'inventing fictitious speeches and ascribing them to *personæ* other than ourselves [...] By means of this way of speaking the dead are raised, and cities and even peoples acquire a voice' (15). Skinner suggests that Hobbes adopts a similar formulation in *Leviathan* when someone's words and actions can be considered as words and actions of another, 'a Feigned or Artificiall person' (Hobbes 1991: 111). Through his cross-reading of Hobbes and Quintilian, Skinner concludes that neither of the thinkers consider it is necessary to have a material body to be a person; 'to count as a person, both he [Hobbes] and Quintilian end by suggesting, it is not necessary to have a bodily substance; it may be sufficient that some natural person has been accredited to play your part' (16).

---

<sup>23</sup> Skinner also repeats a similar version of his analysis in Skinner, Quentin.2007. 'Hobbes on Persons, Authors and Representatives'.*The Cambridge Companion to Hobbes's Leviathan* Ed. Patricia Springborg. Cambridge : Cambridge University Press. 157-180.

<sup>24</sup> In support of this argument, Richard Tuck in the 1991 edition of the *Leviathan* mentions that Hobbes used *civitas* in his Latin works as a synonym for 'commonwealth' (Hobbes 1991: xviii)

What is interesting in Skinner's elaboration is that it reveals that the artificial person does not have a substance of its own, but rather it is an 'invented fiction', a *personæ*, created by the natural person. This reading of the artificial person corresponds with the discussion in the previous section regarding the imaginary construction of the state. Furthermore, Skinner exposes that this imaginary construct is then embodied and enacted, 'played', by the natural person. This is what I mean by the 'performative logic' that operates in between the artificial and material persons, which I discuss in detail in the following chapter. However, here I would like to highlight the almost theatrical manifestation of the state that the material, or the natural, person invents a fiction and animates it through acting, speaking on its behalf. In doing so, not only does the fiction manifest through the material person but also, in a cyclical fashion, the material person ends up submitting to their own fictitious creation through its enactment.

Regarding the imaginary construction of the state in the Turkey specific context, Yael Navaro-Yashin in her study on secularism and public life titled *Faces of the State* (2002), explores an interesting expansion of the bodily imaginary of the state from sovereign to every state official. To recall, in her study Navaro-Yashin proposes that the fantasy of the state lives through the everyday practices: 'The state remains as long as ordinary people are able to pretend that it exists in their everyday practices of life [...] as long as what I call the everyday life of statecraft is maintained, the state is reproduced' (179). To explain this reproduction of state fantasy, Navaro-Yashin gives an example of a woman called Saniye from a shantytown of Istanbul who regularly goes to the municipality to file complaints in her attempt to have a better service from the state: 'Saniye approached the mayor as if he were the state personified. She had gone to the state to complain about the state.' (167). To complement Navaro-Yashin's observations, in the modern context of the state and everyday life of statecraft as she puts it, even some objects gain a stately character, such as official documents and state buildings etc.

Carl Schmitt's reading of Hobbes's *Leviathan* can be illuminating to understand this expansion. Carl Schmitt (1996 [1938]) suggests a rather interesting reading of the fictitious body of Hobbes's *Leviathan* when he writes, '[w]hat appears to have attained is a mythical totality composed of god, man, animal, and machine' (19).<sup>25</sup> In that description Schmitt is more concerned about the interchangeability between the man and the machine, which he interprets

---

<sup>25</sup> In, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (1996 [1938]) Carl Schmitt dissects Hobbes's *Leviathan* as a political myth of the modern secular state that is ruled by parliamentary democracy to expose the contradictory and unconvincing mythical foundations of parliamentary democracy. To put it briefly, Schmitt's objection against the *Leviathan* is twofold: on the one hand Schmitt suggests that due to what he refers as the "mythical totality" of *Leviathan*, Hobbes's state formula demands a complete obedience; however, on the other, Schmitt argues that due to its contract-based foundations and the plurality of parliamentary democracy, Hobbes's model cannot provide this form of governing.

as a reflection of ‘the Cartesian conception of man as a mechanism with a soul onto the “huge man”, the state, made by him into a machine animated by the sovereign-representative person’ (32). And he continues, ‘As a totality, the state is body and soul, *a homo artificialis*, and, as such, a machine. It is a manmade product. Its material and maker, *materia et artifex*, machine and engineer, are one and the same, namely, men (34). Indeed, it is possible to read a machine-like function and motion of a body in *Leviathan*’s opening description that is quoted above. This allows the fictitious body of the Leviathan to transcend beyond the material body of a sovereign. Through its machine-like operation, something reminiscent of Navaro-Yashin’s notion of statecraft, it expands to all state officers and even to unanimated objects alike. Furthermore, the fact that it is a ‘manmade product’ secularises the theological sacredness of the state. However, this expansion does not signify a diffused organisation but, on the contrary, it is a mythical totality, which suggests a unified constellation of state institutions. This totality results in the adaptation of a secular version of a sacred state power. Overall, what the analogy of *Leviathan* establishes within the psyche of the modern political and legal systems is this fictitious unified omnipotent, omnipresent bodily image of the state that operates like a machine through its institutions and is at the same time a human-like subject. Thus, it results in such curious incidents as going ‘to the state to complain about the state’ as Navaro-Yashin puts it, which can also very well describe the police’s embodiment of the state and the processes in the aftermath of police/state violence, filing a criminal complaint to the state against the state, as the Elvan family did.<sup>26</sup>

Despite *Leviathan*’s complex constellation at times, it becomes synonymous with the sovereign, as Hobbes does not consider sovereignty, the artificial soul which unites the *Leviathan*, the state, separately from the *Naturall* person of the sovereign: ‘And he that carryeth this Person, is called SOVERAIGNE, and said to have *Soveraigne Power*; and every one besides, his SUBJECT’ (121). By this move, sovereignty, the artificial soul which, according to Hobbes, unites the state, is bound to the material person of the sovereign, whether it is one person or a group of people acting as the representative of this the sovereign power. This can be explained by Hobbes’s royalist’s stance, as in response to the English Civil War he aims to protect the sovereign power against the destruction of people.<sup>27</sup> It is possible to suggest that

---

<sup>26</sup> The Elvan family filed a criminal complaint to the Istanbul Prosecutor in June 2013, right after Berkin Elvan was hit by the tear gas canister. I discuss the legal proceedings in detail in Chapter 4.

<sup>27</sup> In the introduction to *Leviathan*’s 1991 edition, Richard Tuck mentions a letter exchange between Hobbes and a royalist friend right after Charles I’s execution. The friend suggests Hobbes translate one of his earlier works to ‘influence on the current English political scene’ to which Hobbes responds with ‘he hath another trifle on hand’, that is, *Leviathan* (ix). Once it was done, as Tuck notes, Hobbes ‘attempted to persuade Charles II of the merits

Hobbes's remarks on the form of political unity leads to such a conclusion as he claims political unity does not come from the unity of the represented but from the representer: 'For it is the Unity of the Representer, not the Unity of the Represented, that maketh the Person One' (114). According to Hobbes the masses can form a political unity only through the singularity of the representer as he rejects the idea that masses can be a political group, the people, without a sovereign (157-180). Although the representer can either indicate one sovereign or a sovereign assembly, nonetheless for Hobbes *Leviathan* only refers to the *body politic* of the representer, of the state institutions and officers, which exclude the represented within the unified imaginary of the state. In the contemporary literature this is discussed in terms of the state and society divide that results from state-centric theories in which the state 'is often portrayed as a unitary and autonomous actor that possesses the supreme authority to regulate populations within its territory' (Sharma and Gupta 2006: 8). Hobbes' construction of *Leviathan's body politic* not only signals such a divide, which excludes the people from the imagined unity of the state, but furthermore, Hobbes's objective to protect the sovereign locates the fictitious body of the state against the people.

Regarding violence, Hobbes touches upon the state's use of violence at 'The Rights of Sovereignes by Institution', under three scenarios, all of which are related to securing the sovereign power (121-129). The first one is the sovereign's right to wage war and the second one is about the sovereign's right to punish offenders either according to an existing law or in the absence of law (126). In the third scenario, the sovereign's right to use violence comes up as a legitimate response to people's revolt against the sovereign. It is necessary to note that in all cases Hobbes places the sovereign in a higher rank than the appointed army generals, officers and judges. Aligned with his royalist stance that is mentioned above, Hobbes states that people do not have the right to change the form of government; and he writes: 'if he that attempteth to depose his Sovereign, be killed, or punished by him for such attempt, he is author of his own punishment' (122). This scenario on the sovereign's right to violence consists of matters that are commonly referred to as crimes against the state in modern legal and political systems, which refers to some form of treason and rebellion against the state, or the government.

Hobbes does not provide any measures of accountability except his broad proposition that the sovereign should respect the covenant. As mentioned above, Hobbes is rather more

---

of the book' (xxv). In that regard it would not be wrong to suggest that Hobbes aimed to influence the constellation of post-civil war English politics with his moderate royalist approach in the *Leviathan*.

concerned about establishing a political unity based on loyalty to the sovereign power. In order to establish people's loyalty to the sovereign power he comes up with a rather interesting formula of separating the act from the author: 'Of Persons Artificiall, some have their words and actions Owned by those whom they represent. And then the Person is the Actor; and he that owneth his words and actions, is the AUTHOR: In which case the Actor acteth by Authority' (112). In other words, what Hobbes suggests here is that while the people are the author, the sovereign is the person who represents this authority and, as the representer, the sovereign is the actor who enacts that authority. This separation between the author and the act reflects on Hobbes's remarks on the authorship of the violence. Following this train of thought, anyone who challenges the sovereign does not only go against the contract that they authored but, strikingly, as Hobbes argues, they are the very authors of the sovereign violence that is inflicted upon them. There are striking similarities between the Hobbesian rationale on the authorship of state violence and Erdoğan's response to Elvan's killing, which I discuss further in Chapter 3.

At this point it is possible to drive parallels between Hobbes's royalist response to parliamentary demands of the English Civil War and the Turkish authorities' response to the 2013 Gezi protests. Following the protests, many protesters had been charged with 'attempting to overthrow the government by force', among other counter-terror charges such as 'membership of an illegal organisation'.<sup>28</sup> Furthermore, in 2015, Turkish authorities carried out a criminal investigation and prosecuted Taksim Solidarity Platform activists with similar charges.<sup>29</sup> Following their acquittal, Turkish authorities carried out yet another criminal investigation in 2019 and accused human rights defenders with, among other counter-terror charges, financing and organising an 'attempt to overthrow the government of the Turkish republic or to prevent it from performing its duties'.<sup>30</sup> It is possible to trace a Hobbesian rationale behind the Turkish authorities' persistent attempts at criminalising protestors, and the protests. Hobbesian refusal of people's rebellion against the sovereign reflects on today's

---

<sup>28</sup> The number of people who are charged with such offences is not known. However, detailed accounts of the prosecutions between 2013 and 2014 can be found at Amnesty International's Gezi Park reports. See, Amnesty International 2013, 2014.

<sup>29</sup> 'Gezi Park Protest Trial: Turkish Court Acquits All 26 Defendants'. 2015. *The Guardian*, 29 April. Accessed 28 September 2021. <https://www.theguardian.com/world/2015/apr/29/gezi-park-protest-trial-turkish-court-acquits-all-26-defendants>

<sup>30</sup> On 18 February 2020, 9 of the 16 defendants were acquitted. Osman Kavala who was among those acquitted, was re-arrested on other charges before being released from prison. For more on the Gezi Park Trial see: Karadsheh, Jomana and Sheena McKenzie. 2020. 'Turkish activist Osman Kavala re-arrested hours after his Gezi park acquittal' *CNN*. 19 February. Accessed 28 September 2021. <https://edition.cnn.com/2020/02/18/asia/turkey-gezi-park-trial-verdict-intl/index.html>

modern political and legal systems as criminalisation of protests and prosecution of the protestors with accusations of violating the constitutional order. However, the aspect that concerns this research is the final Hobbesian notion regarding the use of violence, which accuses the protestors themselves for the violence inflicted upon them. At the first glance, this argument may seem old-fashioned and irrelevant to today's modern political and legal systems; however, I believe it requires our attention to grasp the underlying rationale behind the use of state violence during protests and the ineffectiveness of legal accountability processes in its aftermath. Perhaps, then, it would not be wrong to conclude that Hobbes's exclusion of accountability was not accidental, but rather a condition for the survival of the Leviathan.

Even so, it is possible to note the absence of accountability in modern political and legal considerations of the state and its violent acts. For example, the legal philosopher Alf Ross (1961) presents a detailed elaboration of acts of the state in which he argues for the necessity to constitutionally define state acts, including the use of violence, to bring clarity on the rights, liabilities and responsibilities to what he refers to as the 'organs of the state'. Although he does not explicitly refer to Hobbes, Ross's understanding of state acts is reminiscent of Hobbes's construction of Leviathan. To present this briefly, Ross classifies state acts into two forms, *acts-in-law* that is when an actor who possesses public authority and exercises a legally granted power and *factual acts* are acts of physical force (116-121).<sup>31</sup> According to Ross, while the former is 'a power granted to the actor through a rule of competence' (116) the actors of the latter 'possess a qualified freedom of action [...] they are *privileged* to perform certain acts which are forbidden for people in general' (120). In other words, what Ross refers to here is the state monopoly on violence, which is exercised by some state actors such as the police. What is worth noting is that Ross conceptualises the granted use of violence in terms of freedom, rather than an act relying on or requiring competence like the former category, *acts-in-law*. As a result, Ross considers the issue of personal liability only in relation to the *acts-in-law*. While he concludes that those who violate their duty under *acts-in-law* 'incurs personal liability, but the validity of the act is not affected by this violation' (116), Ross does not consider issues of liability regarding violations of *factual acts*. On the contrary, he suggests that 'physical power of compulsion and not a competence – does not seem to be derived from themselves [the actors] in their capacity of individuals, but is attributed to "the State"' (121).

---

<sup>31</sup> Ross also considers some non-violent acts under factual acts which are attributed to the state due to them being paid out of public funds, such as building schools and hospitals. However, Ross excludes the actors of such acts as they neither exercise public authority nor pose a public power of coercion. As a result, Ross concludes that 'there is no cause to regard the employees, whether they have the rank of civil servants or not, as "State organs"' (123).

To put it in other words, when a state official causes violation due to their use of violence, according to Ross it is not the official who is responsible for this violation, but it is the state. If enacting violence on behalf of the state is not an act of individual capacity, then who should be held to account? Ross does not seem to be interested in providing an answer to the issue of accountability that arises from the most critical act of the state, that is its violence. At this point, it becomes apparent that Ross uses the term 'freedom', regarding the state's privilege to use violence, aptly, as it frees the actor from personal liability. To put it in relation to Berkin Elvan's case, then, if it is not the police officer but it is the state who is responsible for his death, how is it possible to hold the state to account? In this case, if the police officer is not the person enacting, representing the state, then who is the state? What I argue here is that the bodily fictitious imagery of the state not only contributes to the justification of state violence for the objective of protecting its unity and integrity, but also is associated with the unaccountability of state violence. On the one hand it masks the responsibility of those who enact violence on behalf of the state, and on the other it cannot be held to account due to its fictitious, imaginary construct.

In secular, modern legal and political constellations, this fictitious, mystical element of the state is often dismissed. For example, H.L.A. Hart (2012 [1961]) in *The Concept of Law*, considers a similar unity, which according to him provides the foundation for a legal system. Rejecting the ultimate sovereign ruler as the source of unity, one whose command is law and who accepts obedience in return, Hart argues that it is the community's acceptance of what he calls 'the rule of recognition' that lies at the foundation of a legal order (100-110). The fundamental difference between Hobbes and Hart is that when the former suggests that it is the unity of the representer, the latter argues that it is the unity of the represented from which law derives its foundation from and, in return, brings an order to secure the unity (ibid.). Following this, in *Law's Empire*, Ronald Dworkin (2012 [1986]) elaborates further on Hart's foundational claim of united community in respect to the personification of the state. After stating that 'Political integrity assumes a particular deep personification of the community or state', Dworkin clarifies his position as such: 'I do not intend now to resurrect the metaphysical theory...' (167-168). By metaphysical theory he means theories such as those of Hobbes, who suggest that there is a higher subject that is 'more real than flesh-and-blood people' (ibid.). Instead, Dworkin deliberates on personification by stating that such a construction of a community results in an assumption of a shared morality. Through a short deliberation on communities feeling a 'collective guilt', based on examples such as German society after Nazi rule, Dworkin concludes that the personification of a community is an integral step in

constructing political unity, or in his choice of words, integrity. He concludes, '[o]nce we accept that our officials act in the name of a community of which we are all members, bearing a responsibility we therefore share, then this reinforces and sustains the character of collective guilt, or sense that we must feel shame as well as outrage when they act unjustly' (175). Although in his own words he does not aim to resurrect metaphysical theories, Dworkin kindles yet another one, one that not only suggests an imagined united community but also assumes that they share a common belief on the state and its institutions. Dworkin's objective to conceptualise a unified community in return results in his being indifferent to the hierarchies and cracks within the communities, hence, resulting in his argument being nothing more than a modern version of the *body politic*. Considering Berkin Elvan's case the following questions can be directed; What happens then when a group of people within the community do not share the belief that the officials, and hence the state, act on their behalf, or in their interest? Or what happens when only a group of the community feels the guilt over the acts of the officials, while others defend the same act? If shared morality is nothing but an assumption, as Dworkin also admits, is it still possible to talk about a united community which constitutes political integrity? When the course of global political history demonstrates that political unifications are always violent events, is it even possible to conceptualise a peaceful unification or set it as an objective in the first place?

To conclude, any modern political and legal conceptualisation of unity and integrity inevitably fails to address the inequalities, hierarchies, and cracks for the sake of its defence. This leads to a dismissal of state violence which occurs as a result of such inequalities and hierarchies that are present within the imagined unity. In the end, such modern political and legal projections exceptionalise state violence and conceptualise a democratic political and legal system of its unaccountability. What is quite remarkable in the examples presented above is that although political and legal conceptualisations differ, there is always an imagined unity or integrity. Although it takes different names – subjectification of the state or personification of a community – the unity is a constant insinuation of a unified body, a *body politic*, and yet there is a constant struggle not to fall into mythical terrains. Despite all the attempts to rationalise political and legal myths, they appear time and again at the core of the legal and political constellations. Thus, rather than dismissing the role of myths, I propose that this is exactly what needs to be addressed here. The discussion above exposes that there is a relation between the mythical construction of political unity, law and violence. The mythical, bodily imaginary of the state is the terrain where state and violence become the condition for one

another, and in defence of which state violence is excused. Respectively, this research proposes that the convergence of state and violence should be revisited in relation to this mythical terrain.

### **Mythical (Police) Violence**

Walter Benjamin's famous essay 'Critique of Violence' (2007 [1921]) is a fundamental reference in studying the relationship between the state, law and violence. Benjamin sets out the objectives of this essay in the first sentence: 'the task of a critique of violence can be summarized as that of expounding its relation to law and justice' (277). However, what makes Benjamin's investigation unique within the scholarship is his use of myth in relation to violence and law. Hence, Benjamin's mythical lens serves as a guide throughout my investigation on state violence in disclosing the mythical constellation of state, law and violence. In his *Critique*, Benjamin first exposes the mythical operation of state violence to then dismantle this mythical core by juxtaposing it with the divine, what he considers as the pure eternal order. Rather than the theological discussion between the myth and the divine,<sup>32</sup> what interests me in Benjamin's critique regards the role of myth and his notion of mythical violence, as my objective is to disclose the mythical character of state violence, that is performed through the police, and its relation to the law. Benjamin's critique exposes the historical function that mythical violence plays in making and preserving legal ends: 'We see here that mythical violence is very much connected with the human project; it creates laws, it establishes boundaries' (Martel 2012: 51). In that regard, it provides us with an invaluable point of departure to address the mythical within the convergence of the state and violence.

Before presenting a discussion on Benjamin's critique however, I open a parenthesis here on his usage of myth. In *Myth and Metropolis*, Graeme Gilloch (1997) presents an analysis of Benjamin's varying use of myth in his works, which are often left unexplained by Benjamin. Gilloch suggests that "'myth" appears to have at least a fourfold significance for him: as fallacious thought, a compulsion, as tyranny, and as a metaphorical device' (9). The first one, myth as a fallacious thought, Gilloch notes, is those related to 'illusions and fantasies' (ibid). He relates the second one, myth as compulsion, to nature's limitation on human beings: 'In myth, human life is not self-determined or self-governed, but rather is subject to fate and the whim of the gods.' (10). And, he adds, 'myth is the unchanging, a state of apparent "timelessness"' (ibid.). The third aspect, myth as tyranny, is something following the second,

---

<sup>32</sup> On this topic, James R. Martel's *Divine Violence* (2012) focuses on the theological aspect of Benjamin's work and presents a detailed account on his notion of divine violence in relation to sovereignty.

which ‘denote[s] the reversal or inversion of this human submission to nature in the modern period’, and, he adds, ‘Modernity presents itself as the end of myth’ (ibid.). Finally, the fourth use of myth in Benjamin’s work, according to Gilloch, is myth ‘as a trope or metaphor’, which he suggests ‘offer clues to those who seek to defeat monstrous powers and facilitate overcoming of myth’ (12). In that regard, Gilloch concludes, ‘for Benjamin, myth is not simply to be equated with delusion and misrecognition. Myth contains within it positive elements and potentialities which must be preserved and utilized’ (ibid.). As I discuss below, it is also possible to note such a use of myth in his *Critique*. On the one hand myth, and mythical violence, appear as a fallacious thought, something related to ‘illusions and fantasies’ of the divine and in that regard appear timeless, omnipotent and omnipresent; it is something resembling fate but, on the other hand, it presents an opening for us to dismantle itself. In that regard, following this explanation, I understand Benjamin’s notion of myth in the *Critique* as two-fold: myth signifying a fallacy of the positive law and a fantasy of state violence which at the same time, bears the potential to undo itself, which I discuss further in the following chapters.

To begin unpacking this, it is necessary to briefly mention Benjamin’s separation between mythical and divine, in which the former appears as a mortal imitation of the eternal form of the latter; as he writes: ‘All the eternal forms are open to pure divine violence, which myth bastardized with law’ (300). As this quote displays, according to Benjamin, the law plays a significant role in the making of mythical violence and hence, he begins his investigation through discussing the natural and positive law in relation to violence. According to Benjamin, natural law ‘regards violence as a natural datum’, the positive law ‘sees violence as a product of history’ (278). Hence, he suggests, when natural law justifies violence as means, the positive law justifies it in terms of just ends (ibid.). Although this may appear as two opposites at first, Benjamin suggests that this leads to a common maxim in justifying violence: ‘just ends can be attained by justified means, justified means used for just ends’ (ibid.). Benjamin does not address the question of justness *per se*, but rather his critique circles around the means/ends relation of violence which finds its legitimation through its historical acknowledgement. Indeed, although Benjamin does not discuss it in great length, he attributes a pivotal role to history.<sup>33</sup> In his *Critique*, history appears to offer a grand narrative to argue the necessity of positive law and to legitimise its end; as he writes, ‘positive law demands of all violence a

---

<sup>33</sup> Benjamin’s detailed account of history can be found in ‘Theses on the Philosophy of History’ in which Benjamin begins his investigation on history with a puppet analogy. In an interesting coincidence, Benjamin likens this puppet dressed ‘in Turkish attire’ to ‘historical materialism’ (Benjamin 2007 [1968]: 253)

proof of its historical origin, which under certain conditions is declared legal, sanctioned' (280). Furthermore, for Benjamin, history appears to establish a separation between unsanctioned and sanctioned, criminalised, violence: 'The distinction is between historically acknowledged, so-called sanctioned violence, and unsanctioned violence' (279).

Although Benjamin does not explicitly refer to Hobbes, I read his remarks in relation to Hobbes's *Leviathan*. By doing so it is possible to acknowledge *Leviathan*'s historical claim, on which Hobbes builds his social contract theory, in relation to violence. To recall briefly, in *Leviathan* Hobbes claim to provide a reading of history which begins with an all-violent state of nature – 'this warre of every man against every man' (90). For Hobbes, this is the result of equality among 'men' as he writes, 'from this equality of ability, ariseth equality of hope in the attaining of our Ends' (87-88). Similar to Benjamin's analysis on natural law, which I mentioned above, Hobbes considers violence as a natural right, *Jus Naturale*, in this state of nature; and hence, for him, violence is a legitimate means to attain ends, and also to secure them (91). Hobbes' fictitious portrayal of man's state of nature serves as a legitimate ground for the necessity of his social contract theory: 'And therefore, as long as this natural Right of every man to every thing endureth, there can be no security to any man' (ibid.), and as a result, Hobbes suggest, in the name of peace, everyone should enter into a contract through which they would exchange their limitless liberty for security by giving up their right to violence to the sovereign or, in its contemporary form to the monopoly of the state (92).<sup>34</sup> Whilst arguing so, however, Hobbes presents *Leviathan*'s fictional account of the state of nature in combination with an actual historical event, the English Civil War.<sup>35</sup> By doing so, I suggest, Hobbes' fiction of the state of nature gains a historicity, a sense of realness and a lived experience. In that regard, to add to Benjamin's remarks on history, the example of Hobbes's *Levitahan* exposes that the historic origins of positive law are already mythical, almost like a fairy tale which everyone knows but of which no one knows of its origin. Additionally, to avoid another civil war, as discussed in the section above, Hobbes grants sanctioned violence only to the sovereign to protect itself against the people, and hence to protect the social contract. To put it in a Benjaminian context, then, while the state's use of violence gets an historical acknowledgement for the protection of the social contract, in other words to establish and

---

<sup>34</sup> 'That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himself he shall think it necessary, to law down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe' (92).

<sup>35</sup> As Richard Tuck explains in the introduction of the *Leviathan*'s Cambridge edition, Hobbes wrote *Leviathan* in response to the English Civil War and he wished the *Leviathan* to serve as a guide in its aftermath, so that as Tuck notes 'he attempted to persuade Charles II of the merits of the book' (xxv).

sustain the positive law, all other forms of violence, and especially the ones against the state, are sanctioned for the same end. In other words, the peaceful premise of Hobbes' social contract is based on and secured through the state's monopoly of violence. As Benjamin also discloses, even though all parties peacefully enter into the contract, every contract contains the possibility of violence as '[i]t confers on both parties the right to take recourse to violence in some form against the other, should he break the agreement' (288). And, he adds, 'Not only that; like the outcome, the origin of every contract also points toward violence' (ibid.). In that regard, considering Hobbes's half-fictional, half-historical narrative through the lens of Benjamin exposes how history, or rather the state's claim on history, justifies the state's monopoly on violence as a means to the end that is positive law.

As becomes apparent through the example of Hobbes' *Leviathan*, violence as the means to the end of positive law has two functions: one that establishes the legal order and the other one that sustains it. Benjamin refers to the former as *lawmaking* and the latter, as *law-preserving* violence. According to Benjamin the *lawmaking* function is inherent to violence, whether it is issued individually or as a group, i.e., Benjamin gives the example of the labour movement and the right to strike (281-283). Contrary to the *lawmaking* function, however, Benjamin reads the *law-preserving* function as something specific to the state's use of violence, 'for the subordination of citizens to laws' (284). Furthermore, Benjamin notes, 'law-preserving violence is a threatening violence' (285). For him, this is something resembling fate, and he adds, 'The deepest purpose of the uncertainty of the legal threat will emerge from the later consideration of the sphere of fate in which it originates' (285).

Before discussing its relation to fate, however I first would like to consider what Benjamin refers to as violence, to then analyse his remarks on police violence. The *Critique* was originally written in German. As each linguistic form is a manifestation of contexts, concepts and meanings that merge in a unique constellation, the English translation is conditioned to present Benjamin's thoughts within its own form.<sup>36</sup> In that sense, in order to discuss Benjamin's *Critique* further, it is necessary to register what he means by violence, or rather by *Gewalt*. Peter Fenves, in his article in the special issue of *Critical Times* on the recent translation of Benjamin's *Zur Kritik der Gewalt*,<sup>37</sup> reminds us that '*Gewalt* means not only "violence" but also "power," "control," "dominion," "force," "supremacy,"' (210). In that

---

<sup>36</sup> As Benjamin reminds us in *The Task of the Translator* (2009 [1923]); 'Clearly a translation, no matter how good it is, can never mean anything so far as the original is concerned' (31).

<sup>37</sup> The new translation is titled 'Toward the Critique of Violence', see; Benjamin, Walter. 2021. *Toward the Critique of Violence: A Critical Edition*. Eds. Peter Fenves and Julia Ng. California: Stanford University Press.

regard, the double function of *lawmaking* and *law-preserving* violence, operates within the broad framework of *Gewalt*, which Fenves registers as an ambiguity of the German language.

On the other hand, Jacques Derrida, in his famous text, ‘Force of Law: The “Mystical Foundation of Authority”’ (1992a [1990]) also touches upon the German-specific meaning of *Gewalt* and suggests that neither its English nor French translation do justice to its authentic meaning: ‘These two translations [...] are very active interpretations that don’t do justice to the fact that *Gewalt* also signifies, for Germans, legitimate power, authority or power of the state’ (6). In that regard, unlike Fenves I consider the broad meaning of *Gewalt* as something bearing all aspects of violence, in both active and passive forms which, through Derrida’s reading, indicate both active forms of state violence and passive forms of violence of state institutions.<sup>38</sup>

From this point forward, Benjamin’s remarks on police violence become even more intelligible as he notes that police violence contains both functions of violence. He writes, ‘Police violence is emancipated from both conditions. It is lawmaking, for its characteristic function is not the promulgation of laws but the assertion of legal claims for any decree, and law-preserving, because it is at the disposal of these ends’ (286-287). From a Derridean lens, then, police violence operates in both the active and passive meanings of *Gewalt*. In reference to the discussion above on the police encounter, then, police violence is both active, in terms of its enactment of physical violence, but at the same time passive, as it aims to *interpellate*, in other words, to subjectify the other. To put this in Butlerian terms, it ‘has the effect of binding the law to the one who is hailed’ (2011:81). Furthermore, Benjamin observes, this peculiar double function of police violence makes the police violence formless and arbitrary, almost ghostly: ‘its power is formless, like its nowhere tangible, all-pervasive, ghostly presence in the life of civilized states’ (287). Derrida (1992a [1990]) picks up Benjamin’s brief remark on the ghostly presence of police violence and elaborates it further. Reiterating Benjamin’s account on police violence, Derrida notes the reason behind ‘phantom-like’ character of police

---

<sup>38</sup> Benjamin does not oppose violence *per se* and he does not advocate non-violence. Hence, it is possible to advance the argument that what Benjamin critiques is the state violence or to put it in Benjaminian terms, the use of violence in relation to means/ends. He discusses his position through the commandment of ‘thou shalt not kill’, which he does not read as a strict restriction but rather as a guidance and leaves, or rather frees, the issue of self-defence as an open-ended deliberation which is to be handled singularly on a case-by-case basis. He suggests that the commandment ‘Thou shalt not kill’ is rather ‘a guideline for the actions for persons or communities who have to wrestle with it in solitude and in exceptional cases, to take on themselves the responsibility of ignoring it’ (298). Başak Ertür reads Benjamin’s handling of self-defence as a move that frees self-defence from the dialectics between natural and positive laws and rather presents it as ‘an ethical option’ (Ertür 2019: 274). Slavoj Žižek, does not only read it as an ethical option but also as a move to oppose ‘the “totalitarian” justification of killing done by those who act as instruments of the big Other’ (Žižek 2008: 200). In that sense it can be argued that with this unexpected ethical move, Benjamin aims to free violence from the monopoly of the state which either claims to act on behalf of or drives its power from the divine.

violence, ‘because it mixes foundation with conservation and becomes all the more violent for this’ (44). What Derrida highlights in Benjamin’s remarks on police violence is the peculiar merging of *lawmaking* and *law-preserving* functions of violence which enacts a specific terror and makes them a ghostly figure: ‘that they are a faceless figure, a violence without a form’, which makes police violence ‘ungraspable in every way’ (ibid.). On this note, Berkin Elvan’s killing and its aftermath expose that the ghostliness of the police violence expands beyond the act of violence to the processes of accountability. As I discuss in detail in Chapter 4, despite an investigation lasting for two years which brought charges to one police officer, Fatih Dalgali, covering and uncovering the identity of the police officer who is responsible for Elvan’s death was the main occupation of the court hearings. From a Benjaminian vein, it is possible to argue that the reason for the failure of the legal processes of accountability, especially after the ghostly police violence, is something to do with their ties due to means/ends structure.

In addition, throughout his *Critique* Benjamin mentions fate. Although Benjamin does not provide a clear direction on his usage of fate, it appears as something belonging to the origins of the positive law: ‘It [positive law] sees this interest in the representation and preservation of an order imposed by fate’ (285). Furthermore, he continues by arguing that positive law operates ‘in the name of a formless “freedom” [...] which resides in the fact that there is only one fate and that what exists, and in particular what threatens, belongs inviolably to its order. For law-preserving violence is a threatening violence’ (ibid). There are a few things I would like to raise in relation to this quote. To begin with, as Benjamin clearly expresses afterwards, for him ‘violence crowned by fate, is the origin of law’ (286). I read ‘violence crowned by fate’ as the *lawmaking* violence which establishes a legal order. If this is the case, then positive law becomes essentially dependent on the existence of that fate in order to sustain itself. With this move, Benjamin discloses the arbitrary, formless freedom that lies in the basis of positive law, which erupts during its preservation. Hence, formless freedom of fate is what makes *law-preserving* violence threatening; it is the threat of re-acting arbitrary, formless freedom of fate to sustain the legal end: ‘The deepest purpose of the uncertainty of the legal threat will emerge from the later consideration of the sphere of fate in which it originates’ (ibid). From a Benjaminian lens, it is possible to consider Hobbes’s social contract theory as a fate of the modern political systems, something that establishes a legal order which presents this fate as the only fate in order to sustain itself. Hence, I suggest that both positive law and police violence operate within the sphere of fate as they are committed to sustain the legal order originated by the ‘violence crowned by fate’ (ibid.).

This is what Benjamin refers to as the mythical violence that is ‘fate-imposed violence’ (294). At this point, Benjamin consults the myth of Niobe to explain the operation of mythical violence. To reiterate from Benjamin’s presentation of the myth, the mortal Niobe angers the goddess of fertility Leto after boasting that she is more fertile than her. In return, Leto orders her two children Apollo and Artemis to kill all Niobe’s fourteen children but spares her. In the end, Niobe’s guilty suffering turns her to stone (294-295). Benjamin calls upon this myth to argue the differences between mythical and divine violence, and to demonstrate how the former imitates the latter. He concludes that ‘Niobe’s arrogance calls down fate upon itself not because her arrogance offends against the law but because it challenges fate – to a fight in which fate must triumph, and can bring to light a law only in its triumph’ (294). I suggest reading Benjamin’s remarks on the myth of Niobe in relation to the discussion above in which Niobe challenges the only fate that sustains the mythical order of the Greek mythical world.<sup>39</sup> As a result the myth has to end with the triumph of that one fate which brings death to Niobe’s children and traps her in an eternal guilt.<sup>40</sup> Furthermore, Derrida points out another aspect in Benjamin’s reading of the myth of Niobe when he writes, ‘the violence that falls upon Niobe comes from fate; and this fate can only be uncertain and ambiguous’ (52). After he refers to it as ““demonic” ambiguity of this mythical positioning of *droit*’ (ibid.).

Following the discussion above, I suggest the law and police violence both operates through this ‘demonic ambiguity’ which disguises itself as fate. In that regard, I read Elvan’s deadly encounter with the police in terms of this disguise. When he was shot by a gas canister that morning, Elvan was on his way to the bakery to buy bread. It is possible to say that the work of fate begins here; however, what transforms this mundane task into a deadly fate is the presence of police violence on his path to the bakery, which was situated on his path to sustain the fate of the positive law during the Gezi protests. This is in a similar vein to the Hobbesian position which justifies the sovereign’s right to kill of those who revolt. To put it in Benjaminian terms, when violence becomes the means for re-asserting and preserving the legal ends it mimics the arbitrary, formless freedom of fate. As I discuss in detail in the following chapter, this is the reason behind the then-Prime Minister Erdoğan’s interpretation of Elvan’s

---

<sup>39</sup> Based on Benjamin’s essay ‘Fate and Character’, Andrew Benjamin highlights that fate has a specific Ancient Greek association in Walter Benjamin’s work (Benjamin 2012: 69-93) in a similar vein as Derrida highlights in *Force of Law* that Benjamin associates mythical violence to the Greek world and divine violence with Judaism (52).

<sup>40</sup> The myth traps Niobe in an eternal guilt; this guilt resembles the guilty feeling that makes the hailed one turn to the police’s hailing, which is an internalisation of the law and accepting, submitting to its binding force. In *Parting Ways* (2012) Butler reads Benjamin’s Critique, as ‘the desire to release life from a guilt secured through legal contract with the state – this would be a desire that gives rise to a violence against violence, one that seeks to release life from a death contract with the law, a death of the living soul by the hardening force of guilt’ (82).

death as a tragic fate of a boy who has done something he should not. The fate, the only one fate, is the one that confirms the legal order which is based upon the state's monopoly on violence. That is the mythical violence, in which the police violence inflicted on Berkin Elvan appeared as if it is his fate, ambiguous as if tear gas canisters casually rain from the skies which at the same time erases its actor, as the police become a ghostly figure.

Graeme Gilloh writes that for Benjamin, '[t]he mythic is not to be celebrated, but rather must be ruined, reduced to rubble to free its positive potential. To do this, however, one must find the destructive, or rather self-destructive moment hidden within the myths of modernity'; and he concludes, 'the mythic paradoxically contains the seeds of its own overcoming, the end of myth' (176). Elvan died as a result of this encounter after staying in a coma for almost one year in the passage of death. During this time, Elvan was commonly referred as *umudun çocuğu*, 'child of hope'. The hope that manifested through Elvan does not only signify a hope for his survival, but also a hope for holding the state to account, suggesting that his innocence as a child would have exposed the excessive, arbitrary police violence. It did not. On the contrary, Elvan and his family were compared to terrorists by state officials and felt as if they were the ones on trial during the court process, which I discuss in the following chapters. Nevertheless, following Benjamin's *Critique*, I do not consider Elvan's deadly encounter, and its aftermath, as a confirmation of the omnipotent and omnipresent power of the state. On the contrary, I read it in a similar vein to James R Martel's (2018) reading of the unburied dead bodies as 'defying state projections of power and authority' (11).

Throughout this thesis, I consider Elvan's killing and its aftermath as a chain of interconnected events which expose various facets of myths and assumptions that surround the notion of state violence and its accountability. In this chapter, I have laid out the theoretical foundations of my investigation while inquiring into the moment when the state manifests through police violence. In so doing, through the works of Benjamin, and Derrida, I disclosed the ghostliness of the police and fateful arbitrariness of police violence. The phantom-like character of the police also signifies a lack of personal agency, as the police do not act on behalf of themselves but on behalf of a higher subject, *the State*. As a result, as we have seen through Alf Ross's elaboration, the police are freed from being personally responsible for their actions. Perhaps it is possible to argue that the state manifests regarding the question of responsibility. It is interesting, in that regard, that although both Ross and the Elvan's funeral crowd attribute responsibility to the state, rather than to the police, however, state accountability is not something that is included within modern political and legal constructions. What we have rather, is a phantasmatic subject, a unified political and legal entity with omnipotent and

omnipresent powers. In that regard, it is significant that how police violence on the one hand, renders the material subject, the police officer, ghostly while, on the other hand, materialises the mythical imaginary of the state. For that reason, I argue that the question of accountability requires us to analyse the mythical imaginary of the state, since this imaginary is not only unaccountable according to the existing legal and political structures but also hides the acting subjects under its fantasy. In this chapter, through an analysis of *Leviathan*, I disclosed the modern (bodily) construction of the state. Again, the point that is worth nothing in this construction is the issue of responsibility as Hobbes's social contract theory attributes responsibility to the victims of state violence. Surely, the mythical imaginary of the state may show nuances in its construction and operation due to different socio-political context which in the following chapter, I explore this operation within the context of contemporary Turkey.

## Chapter 2: Stately Performatives

Two days after Berkin Elvan's funeral, on 14 March 2014, the then Prime Minister, now the President, Erdoğan responded to his killing during a rally speech. In the trajectory of Berkin Elvan's case, this five-minute mention has a significant place as it was the first time Erdoğan commented on Elvan's case.<sup>41</sup> In his hour-long address, Erdoğan commented on Elvan's killing in these words:

There was a funeral in Istanbul a couple of days ago. Unfortunately, a child who was among the terror groups, whose face was masked, with a slingshot put into his hand and iron marbles in his pocket, was exposed to teargas. How could the police identify the age of a masked person throwing iron marbles with a slingshot?<sup>42</sup> (Parti Mitingleri 2014)

In his speech, Erdoğan presents the killing of Elvan as a tragic but expected consequence of Elvan's own actions. In order to do so, Erdoğan evokes a common visual description of a so-called violent protestor who throws iron marbles and firecrackers at police while in disguise. Although there is no evidence supporting this description of Elvan at the time of the incident, Erdoğan is referring to an earlier image of Elvan that has been circulated by the People's Front, which I discuss in the following chapter. Erdoğan later insinuates that Elvan's actions are an outcome of his bad upbringing by his terrorist-sympathiser family. Then he diverges from the Elvan family to his opponent, the opposition leader Kemal Kılıçdaroğlu, and accuses him of being a terrorist sympathiser due to his support of the Elvan family. This time almost in a shouting voice, Erdoğan addresses the following words to the rally crowd:

Despite the facts, Kılıçdaroğlu refers to Elvan as a child who was on the way to buy bread. Be honest, he was not on the way to buy bread! And what is remarkable is that Elvan's mother says it is the Prime Minister who killed my child. I can relate to the love of a child, but I did not understand why you [Elvan's mother] throw carnations and iron

---

<sup>41</sup> A year later, the Turkish newspaper *BirGün* listed Erdoğan's remarks on Elvan's killing. The list demonstrates that Erdoğan's response had not changed throughout the time and that he argued against his responsibility although, as the newspaper article demonstrates, he once said that he had given the orders to clear the park and to put an end to the demonstrations. 'Unutulmasın Diye...Berkin İçin Nerede Ne Demişti?'. 2015. *BirGün*, 16 June. Accessed 28 September 2021. <https://www.birgun.net/haber/unutulmasin-diye-berkin-icin-nerede-ne-demisti-82892>

<sup>42</sup> Translation from its Turkish original belongs to me. Erdoğan's full address can be reached at Parti Mitingleri. 2014.

marbles on your child's grave. What message are you trying to give by throwing those iron marbles on his grave?<sup>43</sup>

In return, the crowd expresses their disapproval of the mother with boos. There is something scandalous in this call and answer. It is something beyond the scandal of accusing Elvan and his family, which has found resonance with discontent in the Turkish media<sup>44</sup> as well as in the international media under the titles such as: 'Berkin Elvan: Turkish PM accuses dead boy of terror links' (BBC 2014) and 'Erdoğan makes crowd boo Berkin Elvan's family' (Al-Monitor 2014).<sup>45</sup> In his response, Erdoğan does not comment on any legal or political processes regarding Elvan's killing, yet claims the righteousness of facts. Although he adopts a casual tone, his address is a pre-written and practiced speech, a performance, which transmits a Hobbesian message that those who rebel against the sovereign are the ones responsible for their deadly fate, as discussed in the previous chapter. In that regard, Erdoğan's rally speech performance responds to the political and legal demands of accountability by their rejection. Furthermore, what is worth our attention is the way in which he communicates this rejection. He does not reject the demands for accountability and his responsibility through directly addressing such arguments, but rather he does so by shifting the discussion from political and legal processes of accountability to a family matter. This shift peaks at the moment of the call and answer of booing Elvan's mother, the failed mother who raised a disobedient son.

---

<sup>43</sup> Iron marbles are considered as common weapons used against the police by the protestors; combined with slingshot and firecrackers, they are the everyday weapons of resistance. However, marbles bear an interesting double symbolism as glass marbles are also a common symbol of childhood. It is remarkable that Erdoğan sees terrorism in a symbol of childhood.

<sup>44</sup> The scene of booing Elvan's mother had occupied the public discussion for a while. Even so, a Turkish singer, Yavuz Bingöl who appeared to be close to Erdoğan at the time excused the booing in an interview on 3 December 2014. Bingöl suggested that Erdoğan made the crowd boo the mother, because people had cursed Erdoğan's mother. Hakan, Ahmet. 2014. 'Bütün Yönleriyle Yavuz Bingöl Olayı'. *Hürriyet*, 5 December. Accessed 28 September 2021. <https://www.hurriyet.com.tr/yazarlar/ahmet-hakan/bütün-yonleriyle-yavuz-bingol-olayi-27711761> The statement caused yet another wave of uproar in the public, even so Elvan's mother responded to Bingöl asking whether he would have joined the booing crowd. 'Berkin'in Annesinden Bingöl'e: Sen de Yuhalayacak Mıydın?' 2014. *Ege'den Son Söz*, 3 December. Accessed 28 September 2021. <http://www.egedesonsoz.com/haber/berkin-in-annesinden-bingol-e-sen-de-yuhalayacak-miydin/884951>

<sup>45</sup> To list some examples from the international media coverage of the rally: 'Berkin Elvan: Turkish PM Accuses Dead Boy of Terror Links'. 2014. *BBC*, 15 March. Accessed 28 September 2021. <https://www.bbc.co.uk/news/world-europe-26594922> 'Erdoğan Links Dead Turkish Teenager to 'Terrorist' Groups'. 2014. *Reuters*, 15 March. Accessed 28 September 2021. <https://www.reuters.com/article/us-turkey-protests-idUSBREA2E0A820140315?rpc=401> 'Erdoğan Says Turkish Teenager Killed in Protests Was a Terrorist'. 2014. *Haaretz*, 15 March. Accessed 28 September 2021. <https://www.haaretz.com/Erdoğan-links-dead-teenager-to-terrorist-groups-1.5334197> and 'Erdoğan Makes Crowd Boo Berkin Elvan's family'. 2014. *Al-Monitor*, 16 March. Accessed 28 September 2021. <https://www.al-monitor.com/pulse/originals/2014/03/Erdoğan-terrorist-elvan-crowd-incitement-elections.html>.

Indeed, Erdoğan's rally speech is built on a family analogy. While referring to a time before the AKP rule, he presents personal anecdotes from his own family. He discloses the hard decisions he had to make as the father, as if he is having a heart-to-heart with the rally crowd. This father figure, which he performs, serves as a passage from personal to national, as he tacitly invokes a common political imaginary of modern Turkey: *devlet baba*. In the reading I provide in this chapter, *devlet baba*, which literally translates as *father-state*, is the myth of the Turkish state that Erdoğan consults in his response to Elvan's killing as well as to the dissolution of the unified state imaginary. The two aspects, which are uniting the state and the subjection of Elvan and his family, are intertwined with one another under the mythical stately image of the *father-state*. Thus, in this chapter, I refer to Erdoğan's *father-state* performance as a *stately performative*. My suggestion of the term *stately performative* is not only to highlight its magnitude, as the word 'stately' would suggest in its common usage; rather, I use *stately performative* in reference to performatives which are performed by the ones who claim, and acclaim, the mythical imaginary of the state and its powers. My objective in suggesting the term *stately performative* is associated to the task of understanding how the state acts, and how it is constructed through such acts. As I explain further in this chapter through Erdoğan's rally speech, what I read as a *stately performative* is Erdoğan's enactment of a political myth, namely the *father-state*, which is deeply rooted in Turkey's political culture and which constructs a certain knowledge of the (Turkish) state. In that regard, as I discuss further in this chapter, Erdoğan's rally speech, as a *stately performative*, performs and re-constructs the state through evoking majestic mythical, and *stately* constellations within which Elvan has a role as a misbehaving, disobedient son.

As the chapter inquires into the doings of Erdoğan's rally speech, it contributes to the existing literature on performative utterances while focusing on the reciprocal operation of Erdoğan's *stately performative* which plays out in the form of a call and an answer. The call—that is Erdoğan's accusation of Elvan, his mother and the opposition leader—is complemented and completed with the audience's boos. As I unpack further below, I read the call and answer format of Erdoğan's *stately performative* as something challenging the absolute (sovereign) authority that is commonly attributed to the utterer and which exposes the mythical performance of this assumption. In relation to the discussion in Chapter 1 on the mythical existence of the state and its manifestation through the everyday performance of statecraft, this chapter suggests that Erdoğan is not the only (sovereign) utterer of the *stately performative*. Although his call intends to receive a certain answer, it still bears a potential for its refusal, a refusal of the mythical imaginary of the state and its powers, which is situated between the gap

of the call and the answer. The chapter first carries out a conceptual discussion on Erdoğan's rally speech to locate this potential within the operation of his *stately performative*. Then, through a close reading of the rally speech, the chapter discloses the making of political myths and introduces the Turkey-specific mythical framework of the *father-state*. Finally, the chapter elaborates on Elvan's disposition within the mythical state imaginary of the *father-state*.

### **Between Performance and Performativity**

I read Erdoğan's rally speech, in which he addressed the death of Berkin Elvan, in two parts. The first part is when Erdoğan accused Elvan of imitating terrorists, if not actually being one, and the second part is when Erdoğan extends this accusation to his opponent, and, more significantly, to Elvan's mother who, in turn, received boos from the rally crowd. The first part, in which Erdoğan likens Elvan to a terrorist, 'whose face was masked, with a slingshot put into his hand and iron marbles in his pocket', utters an accusation without pronouncing the exact words: *I accuse*. This accusation is a performance of the Hobbesian maxim, as discussed in the previous chapter, which accuses the victims of state violence of violating the covenant, and hence finds the victims responsible for the violence inflicted upon themselves. In that regard, with the accusation, Erdoğan responds to the demands of accountability by subjectifying Elvan as a disobedient son, which I discuss further in the following sections. In the second part, however, as he extends the accusation towards his opponent and towards Elvan's mother, Erdoğan performs a *stately* imaginary. His *stately performative* then receives a confirmation, a validation from the rally crowd in the form of boos. I present the meanings behind his *stately performative* in detail in the following sections; in this section, however, I present a discussion regarding the conceptual framework of performative utterances which allows us to register the many doings of Erdoğan's rally speech.

At this point, it is necessary to present a brief account of performative utterances. Linguistic philosopher J.L. Austin's work on performative utterances, which he introduced in a series of lectures in 1955 and was later published under the title of *How to Do Things with Words* (1975), constitutes the foundation of studies on performativity. Austin's notion of performative utterances is a rather strict linguistic category with many conditions to fulfil, which even Austin himself fails to obey. Scholars (such as Derrida 1988, Felman 2003) who follow Austin and reconsider his notion understand his failings in terms of unexplored potentials of the performative utterances. In Austin's words, performative utterances are the ones 'in which to *say* something is to *do* something; or in which *by* saying or *in* saying something we are doing something' (12). Although, according to Austin, performative

utterances grammatically appear like statements, which Austin calls constative utterances, performative utterances diverge from constatives as they are neither true or false, and they do not describe, report or constate anything (5).<sup>46</sup> Furthermore, Austin's performative utterances follow a certain sentence syntax; they are all 'verbs in the first person singular present indicative active' (ibid.). Austin provides examples such as: I promise, I apologize, I dare you, I bet, I sentence you and I do (as in a marriage ceremony). Although, according to Austin, the performative utterances do not have a true/false judgement, they nonetheless must fulfil certain conditions in order to be successful, all of which are related to having the right context, procedure and actor (14-15). Austin lists those conditions under three categories; while the first category has to do with having 'accepted conventional procedures' (A.1) in which the performative utterance is uttered by the appropriate person (A.2), the second category has to do with the execution of the procedure (B.1 and B.2), that it must be completely executed by all appropriate actors (ibid.). In other words, for Austin, conventions are important in defining and performing performative utterances; and hence, failure in both categories results in void performative utterances which he refers as *misfires*.<sup>47</sup> The third category, on the other hand, has to do with thoughts, feelings and emotions. For example, the person who says 'I do' in a wedding ceremony could be unwilling to do so. However, regardless of their insincerity the convention validifies the performative utterance and they are married. Austin refers to failures of all the categories as *infelicities*, and considers the third case as *abuses*, the 'act [is] professed but hollow' (18). In that regard, for Austin neither feelings nor emotions are factors determining the validity of a performative utterance; nor do they have the potential to trigger a convention-like process which I observe in Erdoğan's exchange with the rally crowd as I explain further below.

Austin's treatment of emotions and feelings within his coinage of performative utterances interests me, as Erdoğan's accusation, *I accuse*, provoked certain feelings and

---

<sup>46</sup> Throughout his lectures, Austin struggles with this constative/performative distinction, which he addresses in the final lecture. Shoshana Felman (2003) in her cross-reading of Austin with Moliere's play *Don Juan*, presents an analysis of Austin's notion of performative utterances while considering Austin's own performance of delivering lectures. Felman notes that 'Austinian analysis, if it is an act, is only the act of *failing to grasp the constative of the performative*' (43). Felman reads this as a scandal in which Austin scandalously realises that the constative/performative distinction does not hold. The scandal, however, is not in the failure of performativity as a pure linguistic form, but rather, as Felman suggests, its own subversion while performing the performatives. Thus, Felman argues that Austin's theory of the performative includes all its exclusions and failures: 'the capacity for failure is situated not outside but inside the performative, both as speech act and as theoretical instrument' (45).

<sup>47</sup> Austin names the failure of the first category as *misinvocations* and the failure of the second category as *misexecutions* (18). It is necessary to note that the names Austin gives to infelicities are not definite; as the publisher notes, in his lectures from time-to-time Austin refers to them by different names, such as non-plays for A.1, misplays for A.2...etc. (ibid.).

moved the rally crowd. Not only did his accusation of Elvan and his mother initiate the rally crowd to express their feelings in boos, but his initiation, which was captured by the media as Erdoğan's doing as mentioned above, also generated certain feelings in the public. Thus, it is possible to argue that in both cases Erdoğan's accusation produced certain effects. Indeed, later on in his lectures, while aiming to clarify the borders of performative utterances, Austin suspends the performative/constative distinction and introduces another set of categories, namely *locutionary*, *illocutionary* and *perlocutionary* acts in which he addresses the issue of speech-acts that produce certain effects. To introduce these briefly, Austin describes *locutionary* acts as acts 'in which to say something is to do something', *illocutionary* as 'in saying something we do something' and *perlocutionary* as 'by saying something we do something' (94). Austin, then focuses on *illocutionary* acts to reintroduce performative utterances, however, what is significant here in relation to Erdoğan's rally speech is his distinction between *illocutionary* and *perlocutionary* acts, as he writes:

to perform a locutionary act, and therein an illocutionary act, may be to perform an act of another kind. Saying something will often, or even normally, produce certain consequential effects upon the feelings, thoughts, or actions of the audience, or of the speaker, or of other persons: and it may be done with the design, intention, or purpose of producing them [...] We shall call the performance of an act of this kind the performance of a 'perlocutionary' act' (101).

Austin suggests that we have 'to draw the line between an action we do (here an illocutionary) and its consequences' (111) while admitting that this is not an easy task. Indeed, following the distinction, he points out certain cases in which *illocutionary acts* must produce certain effects in order to be successful:

Unless a certain effect is achieved, the illocutionary act will not have been happily, successfully performed. This is not to say that the illocutionary act is the achieving of a certain effect. I cannot be said to have warned an audience unless it hears what I say and takes what I say in a certain sense. An effect must be achieved on the audience of the illocutionary act is to be carried out (116).

Despite such occasions in which the distinction between *illocutionary* and *perlocutionary* acts appears blurry, for Austin the main point of separation is the force of *illocutionary* acts, as

Austin classifies them as ‘utterances which have a certain (conventional) force’ (109). In that regard, when an *illocutionary* act produces a certain effect, it is due to its conventional force. In other words, in *illocutionary* utterances what produces an after effect is not feelings or emotions but the force of the convention. Furthermore, in Austin’s coinage the context of conventional force limits the effects to the moment of utterance, whereas Erdoğan’s utterance, *I accuse*, produces effects exceeding the moment of its utterance. Indeed, in *Excitable Speech* (1997) Judith Butler, while elaborating on how hate speech injures its addressee, identifies the issue of temporality within Austin’s coinage of performative utterances. Butler indicates that for a performative utterance to be ‘not only conventional, but in Austin’s words, “ritual or ceremonial”’ it must be ‘repeated in time, and hence, maintain a sphere of operation that is not restricted to the moment of the utterance itself’ (3). Hence, Butler points out that even *illocutionary* acts are not limited to the moment of their utterance, and points to the blurring of *illocutionary* acts and *perlocutionary* effects of utterances:

The illocutionary speech act performs its deed at the moment of the utterance, and yet to the extent that the moment is ritualized, it is never merely a single moment. The “moment” in ritual is a condensed historicity: it exceeds itself in past and future directions, an effect of prior and future invocations that constitute and escape the instance of utterance (ibid.).

Following Austin’s explanation and Butler’s expansion on effects of *illocutionary* acts, it is possible to argue that the rally crowd’s booing is a perlocutionary after effect of Erdoğan’s accusation. This effect, I suggest, complements in other words validates, Erdoğan’s accusation with an affirmative response. If this is the case, Erdoğan’s accusation must have a force that moves the rally crowd; this force, I argue, drives from the mythical imaginary of the state that Erdoğan performs. In other words, in addition to Erdoğan’s accusation against Elvan, his utterance does something to the rally crowd; or to put it in another words; the reciprocal operation of Erdoğan’s call in conjunction with the crowd’s answer does something. In the absence of a conventional procedure as Austin understands it, how do we address the reciprocal doings of Erdoğan’s accusation, *I accuse*, and the rally crowd’s affirmation in boos? I suggest the rally speech has both *illocutionary* force and *perlocutionary* effects that become difficult to distinguish and that complement one another.

It is necessary to address the distinct form of a rally speech in which, resembling a mobile theatre, the utterer travels from city to city to deliver a pre-written and rehearsed speech.

Although the speech is often pre-written and read in front of an audience, it is not limited to a conventional procedure. Within its ritualistic repetitiveness, there are temporal alterations and breaks. The speech goes through alternations that are specific to the time and space of the address, such as listing all the investments made in that specific city, as Erdoğan does at the end of his rally speech. But more significantly, it bears the potential to break off from its ritualistic repetitiveness as it invites the audience to respond, just as in the case of Erdoğan's accusation which I read as his call to the rally crowd. In that regard, it is possible to argue that Erdoğan's rally speech resembles the form of a performance in which the measure of its success or failure depends on whether it moves the audience, a movement which often materialises in the form of clapping, chanting slogans or exclamations such as booing. However, this resemblance interferes with its recognition as a performative utterance in Austinian terms. Although for Austin it is significant that the term 'performative' derives from the verb 'to perform' to indicate 'that the issuing of the utterance is the performing of an action' (6), it is important to note that by suggesting a term derived from 'to perform' Austin does not aim to highlight a theatrical aspect. On the contrary, Austin considers what is theatrical as parasitic, rendering a performative utterance void:

a performative utterance will, for example, be in a peculiar way hollow or void if said by an actor on the stage, or if introduced in a poem, or spoken in soliloquy [...] Language in such circumstances is in special ways – intelligibly – used not seriously, but in ways parasitic upon its normal use – ways which fall under the doctrine of the etiolations of language. All this we are excluding from consideration (22).

Regardless of Austin's exclusion, Andrew Parker and Eve Kosofsky Sedgwick (1995) address the intersection between performative and performance, and later Sedgwick (2003) proposes a conceptual framework of *periperformatives* as a formula to attach performance and theatrical performativity to Austin's highly specific notion: 'through not themselves performatives, they are about performatives and, more properly, (that) they cluster around performatives' (68). In doing so, surprisingly, Sedgwick accepts the Austinian separation of performance and performative utterances.

However, in the quote above, it appears that the reason for Austin's exclusion of the theatrical is its unserious nature, perhaps something related to having certain effects. At this point, if we return to the rally speech, despite its theatricality in terms of performance, would it be possible to say that Erdoğan's speech was not serious, or that it did not have any serious

implications? I would suggest that seriousness cannot be a criterion for excluding performance from the performative. For instance, in 1999 when Erdoğan was the Governor of Istanbul, he was sentenced to 10 months in prison which also barred him from running for public office and prevented him from participating in parliamentary elections. He was charged with ‘inciting hatred based on religious differences’ according to article 312/2 of the previous Penal Code (no: 765),<sup>48</sup> after reading a verse of the well-known nationalist poet Ziya Gökalp at a rally speech in 1997.<sup>49</sup> It is possible to suggest that Erdoğan’s poem invited the legal performative, *I sentence you*, which had serious consequences for Turkey’s political trajectory. In that regard, I locate the rally speech between performance and performativity. Furthermore, a rally speech invites a response— either a momentary one from the audience, or a future response in the form of votes —but it may also have further effects and implications that may or may not be predicted at the time. In other words, as Butler indicates the utterance of a rally speech exceeds the moment of its utterance and to add, its force comes from the feelings and emotions that it produces.

Stanley Cavell’s notion of *passionate utterances* which he develops following Austin’s illocutionary/perlocutionary distinction, could be illuminating to address how feelings and emotions in Erdoğan’s call produce an effect. As Cavell explains in ‘Performative and Passionate Utterance’ (2005), in Austin’s project he observes a ‘continued neglect of the passions’ which leads him to extend on Austin’s theory with a focus on perlocutionary utterances to register the doings of *passionate utterances* (159).<sup>50</sup> Cavell observes that Austin’s definition of performative utterance ‘relies on the idea of appropriateness’, or in other words relies on having conventional procedures, which *passionate utterances* exceed (164). Cavell notes ‘[a] performative utterance is an offer of participation in the order of law. And perhaps we can say: A passionate utterance is an invitation to improvisation in the disorders of desire’

---

<sup>48</sup> This article existed in the 1926 Turkish Penal Code (law no: 765). The article was repealed when a new Penal Code came into force on 1 June 2005.

<sup>49</sup> The poem included the lines, “The mosques are our barracks, the domes are our helmets, the minarets our bayonets and the faithful our soldiers”; see; ‘Profile: Recep Tayyip Erdoğan’ 2018. *Aljazeera*, 25 June. Accessed 28 September 2021. <https://www.aljazeera.com/indepth/spotlight/turkeyelection/2011/05/2011526121054590355.html>

<sup>50</sup> In an earlier writing in which Cavell inquires into Austin’s illocutionary/perlocutionary distinction through responding to Derrida’s reading of Austin, Cavell comments on the privileged place of *illocutionary* utterances in Austin’s notion of performative utterances. While noting that ‘illocutionary utterances take over and further articulate the cases Austin began by simply calling performatives’ (1994: 81), Cavell raises his objection that Austin would fail to acknowledge the performative operation of *perlocutionary* utterances; ‘Now since there is no reason to believe that Austin for some reason fails to regard annoying or wounding someone, or persuading them of something, as something language is as fully capable of conveying as it is of conveying bets and gifts’ (82). I understand Cavell’s objection as an intervention to readings that exclude *perlocutionary* utterances from the category of performative utterances.

(185). In that regard, *passionate utterances* do not operate through a conventional procedure but rather ‘[t]he speaker is on his or her own to create the desired effect’ (180). Considering Erdoğan’s call as a *passionate utterance* allows us to register the doings of the rally speech and how Erdoğan creates the desired effect of declaring Elvan, and his mother guilty of disobeying the *father-state*. I observe a convention-like process in Erdoğan’s rally speech in which *perlocutionary* effects and *passionate utterances* complement where force of convention falls short. Although Erdoğan does not have the authority and the context to pronounce Elvan and his mother guilty in a rally speech, by calling on the passions of the rally crowd, he nonetheless, delivers a guilty verdict and institutes a law where there has not been a legal process. However, this does not mean that Erdoğan is the only utterer, as Erdoğan’s call for a boo is an invitation to exchange as his accusation invokes a procedure that demands an answer: ‘Demand from you a response *in kind*, one you are in turn *moved* to offer, and moreover [...] Now’ (182).

Following Austin and Cavell, in *Our Word is Our Bond*, Marianne Constable (2014), challenges the authority of ‘I’ as the utterer. She notes in a dialogue ‘I’ and ‘you’ keeps changing places (91). I understand the reciprocal call and answer in a similar manner; however, I do acknowledge that there is a force in Erdoğan’s call which directs the crowd’s response. In her elaboration of legal speech-acts, Constable exposes that by responding affirmatively to imperatives both ‘I’ and ‘you’ become actors of the speech-act:

Insofar as this “I” unites with other subjects, a collective of “I”s becomes possible. A collective of “I”s is a “we” of sorts. On its own, this collective “I” is not the “we” whose “word is bond” [...] For the *we* of “our word” or “our bond” to emerge, *I* must become *you*, and *you*, *I* to one another’ (93)

As mentioned before, I understand the rally crowd’s boos as an affirmation of Erdoğan’s passionate accusation against Elvan and his mother. I suggest that by making the crowd co-authors of his accusation, Erdoğan constructs a ‘we’ which corresponds with his construction of a nation, which I discuss in the following sections. That is what I refer to as Erdoğan’s *stately performative*, since his accusation reconstructs a mythical imaginary of the state by singling out Elvan and his mother from this imaginary. This constructs an imaginary “we” through the reciprocal operation of the call and the affirmative answer in boos. As Cavell writes in regard to *passionate utterances*, ‘if I generalize my standing in singling you out, and attempt to recognize or create a group to whom I speak, in its difference from another group, then I undertake political oratory’ (182).

Furthermore, I suggest Erdoğan's call carries a force which resembles the force in Althusser's police hailing analogy which I discussed in the previous chapter. In his *stately performative*, Erdoğan claims– and acclaims– the state; in other words, he performs the state as he embodies the mythical (bodily) imaginary of the state, which I unpack further through his *father-state* performance in the following sections. His accusation of Elvan and his mother, *I accuse*, subjectifies Elvan as a disobedient son and, similar to the myth of Niobe, aims to subjectify his mother through guilt as a failed mother. What is more striking in a similar manner to Althusser's hailing analogy, in which the hailed gets subjectified as they turn to the hailer, Erdoğan's call subjectifies the rally crowd as they respond affirmatively in boos. However, to remember Cavell's point on *passionate utterances* being invitations to disorder, '[i]n the mode of passionate exchange there is no final word, no uptake or turndown until a line is drawn, a withdrawal is effected, perhaps in turn to be revoked' (183). In that regard, complementary to Butler's objection to the absolute authority of subjection, Erdoğan's call is also an invitation for its refusal and disobedience, as Cavell notes 'in the realm of the perlocutionary, refusal may become part of the performance' (ibid.). Indeed, Erdoğan's call also demands an answer from those who Erdoğan deems as terrorists, and whom, he claims, Elvan was imitating, which I discuss in Chapter 3.

Situated between a performance and a performative utterance, where *illocutionary* acts and *perlocutionary* effects blur, Erdoğan's rally speech swings from being official to unofficial. In that regard, it is remarkable that Erdoğan chooses to comment on Elvan's killing and respond to demands of accountability within this peculiar context. In relation to the discussion on the seriousness of an utterance, on the one hand this may serve as an official response, but on the other hand it cannot be held into account. The force of Erdoğan's call derives from his repetitive performance of the mythical imaginary of the state, as Butler reminds:

Social action requires a performance which is repeated. This repetition is at once a re-enactment and reexperiencing of a set of meanings already socially established; it is the mundane and ritualized form of their legitimation [...] Understood in pedagogical terms, the performance renders social laws explicit (1990b: 277).

As Erdoğan accuses Elvan of his own death, he embodies Turkey's bodily state myth, the *father-state* and hence performs his accusation from a force that derives from its repetition. His embodiment of the *father-state* indicates to the significance of the body in his *stately performative*. In order to unpack this aspect, I consult Butler's revision of performativity. As

Elena Loizidou points out in *Judith Butler: Ethics, Law, Politics* (2007) ‘Butler situates bodies (both literally and figuratively) at the centre of her analysis’ (23). Considering Butler’s criticism of the title of the first English edition of Felman’s work on performative utterances (*The Literary Speech Act*), that it ‘lost the body’, for Butler the body is the main component of performative speech: ‘they draw upon the body to articulate their claims, to institute the realities of which they speak’ (Butler 2003: 113). However, Butler’s emphasis on the body is not to highlight the authority of the speaking body, but rather to expose the transformation the body goes through while speaking or rather speak-acting. In that regard, Butler reads performative utterances as constituting acts, ‘constituting acts not only as constituting the identity of the actor, but as constituting that identity as a compelling illusion, an object of belief’ (Butler 1990b: 271). In a similar vein, I read Erdoğan’s rally speech as a *stately performative* which constructs two bodies, his own and the *body politic* of the Turkish state, at the same time as Erdoğan performs the *father-state*. In Erdoğan’s speech the paternal right to punish the disobedient son, merges with the stately right to kill as Erdoğan accuses Elvan of his own death. As a final point, as Loizidou also points out, Butler reads performativity as a way of writing history, ‘in reconstructing the past and refiguring the future’ (Loizidou 2007:20). Performative speech as a form of history writing, which consists of erasing and re-writing, exposes ‘the active role played by both language and bodies’ (ibid.). Erdoğan in his accusation against Elvan for his own death, aims to erase and re-write history by portraying Elvan with a face mask and a slingshot. His account of events contests the Elvan family’s and witnesses’ accounts. Erdoğan claims to speak the truth by performing the all-knowing and undisputed *father-state* which demands an affirmative response from its addressee. Through his bodily performance of the *father-state*, Erdoğan intends to constitute his own identity, in terms of authority, and to reconstruct a unified political body that materialises in his body. As I discuss further in the following sections, he does so by excluding the Elvan family and his opponents from the Turkish *body politic* as he directs the rally crowd to affirm his accusation in boos.

### **The *Father-state***

In *Mythologies*, Roland Barthes writes, ‘[w]hat the world supplies to myth is an historical reality, defined, even if this goes back quite a while, by the way in which men have produced or used it; and what myth gives in return is a natural image of this reality’ (169). Barthes’s *Mythologies* mainly focuses on myths as anonymous tales which are significant to a culture, and which have a semi-historical, or rather pseudo-historical, quality, such as the myth of

Niobe.<sup>51</sup> Although what I refer to as myth, or to be precise political myths, does not exactly fit to this classical form, I argue that they, nonetheless, function in a similar manner. And although Barthes does not use this term, I read his quote above, in which he summarises the meaning and function of myths, as something disclosing its performativity. I propose a cross-reading of Barthes's quote above with another quote from Butler on performativity:

Performativity is thus not a singular 'act,' for it is always reiteration of a norm or set of norms, and to the extent that it acquires an act-like status in the present, it conceals or dissimulates the conventions of which it is repetition. Moreover, this act is not primarily theatrical; indeed, its apparent theatricality is produced to the extent that its historicity remains dissimulated [...] Within the speech act theory, a performative is that discursive practice that enacts or produces that which it names (2011: xxi).

Myths live through their repetition; they reflect societal, cultural, political norms. In other words, as Barthes puts it, 'what the world supplies to myth is an historical reality'. However, as Butler points out, this set of norms does not exist prior to the myths, but rather they are constructed, deconstructed and reconstructed through their repetition. In return, myths give a natural, or objective image of this constructed reality. They produce that which they name. In terms of political myths, towards the end of his study of myths, Barthes discusses bourgeois ideology as a form of myth, and he notes the work of myth in today's context: 'For the very end of myths is to immobilize the world: they must suggest and mimic a universal order which has fixated once and for all the hierarchy of possessions' (183). And he continues, '[m]yths are nothing but this ceaseless, untiring solicitation, this insidious and inflexible demand that all men recognize themselves in this image, eternal yet bearing a date, which was built of them one day as if for all time' (184).

The state has a specific mythical bodily image in Turkey. *Devlet baba*, literally translating to *father-state*, is the dominating imaginary of the state in Turkey which establishes the relationship between the state officials and the people. It is a bodily image of the state, a *body politic* of the Turkish state. Prominent law professor Ergun Özbudun (1993) locates the origin of this imagery in Ottoman Empire, in the Sultan's duty to maintain order through his

---

<sup>51</sup> In his work, Barthes also presents a linguistic analysis of myths in which he refers to myths as metalanguage, that locates myth within a separate terrain, second-language order, then statements (183). Although it is possible to carry out a linguistic cross-reading of Barthes' definition of myths with the Austinian notion of performative utterances, this research is rather interested in the performative function of political myths in terms of their performance and repetition.

absolute power, which ‘was to be exercised with justice and with the aim of promoting public welfare’ (190).<sup>52</sup> Özbudun concludes that ‘[t]his last notion gave the Ottoman-Turkish state its paternalistic character [...] Interestingly, not only the ruling class but also the subject masses seemed to share this belief in the paternalistic nature of the state, as evidenced by the popular expression of “father-state” (*devlet baba*)’ (ibid.). This thesis does not trace the Ottoman experience of the state, as it focuses on the contemporary political and legal constructs. However, Özbudun’s observations can guide us to comprehend how the *father-state* myth has constructed the meaning of the state and, to put it in Barthes’s words, demanded everyone – citizens and state officials alike – to recognise themselves in this image and, to add in Butlerian terms, to perform this image.

The nuclear family was a significant unit and metaphor of the nation-state building process in the early years of the Turkish Republic and it continued to be a significant metaphor in the education of the upcoming generations to maintain the unity of the nation.<sup>53</sup> Carol Delaney’s (1995) ‘Father State, Motherland, and the Birth of Modern Turkey’ provides an overview of the peculiar overlap of state and fatherhood within the Turkish context. As is explicit in the title, in the essay Delaney suggests that the Modern Turkish nation was conceived by the *father-state*, Atatürk, and motherland. Delaney through highlighting the commonly used phrases of *devlet baba* (father-state) and *anavatan* (motherland) suggests that this gendered parental image is carefully constructed during the transition from the Ottoman Empire to Modern Turkey, which is then referred to and accepted as the re-birth of a nation. Although Delaney’s observations could apply to any nation-state building project, especially in the eighteenth century, nonetheless Delaney exposes the kinship relations enacting within the national consciousness of Turkey through the newly coined political term for citizen which is significant in defining the state and society relations:

All those born upon and nurtured by her [motherland] soil were henceforth to be related like siblings. *Vatandaş*, the word coined to mean ‘citizen,’ is literally ‘fellow of the

---

<sup>52</sup>In terms of the Turkish Republic’s adaptation of the welfare state it is possible to trace secularised versions of Ottoman practices. In this regard, the transformation of the Ottoman’s state supported the religious philanthropic system called vakıfs, to a secular civil society in modern Turkey provides an interesting trajectory in tracing adaptations and discontinuities of values in state and society relations. For more on this see; Zencirci, G. (2014). ‘Civil Society’s History: New Constructions of Ottoman Heritage by the Justice and Development Party in Turkey’. *European Journal of Turkish Studies* (19), 1-20.

<sup>53</sup> The notion of *father-state* or *fatherly state* is commonly used in Turkish literature and especially in children’s books. One of the best-known contemporary examples is by the prominent children’s book writer Muzaffer İzgü’s *Devlet Babanın Tonton Çocuğu* (1981) which translates as perky child of father state, see; İzgü, Muzaffer. 1981. *Devlet Babanın Tonton Çocuğu*. Istanbul. Bilgi Yayınevi.

motherland'; it is like the word *kardeş*, which means both brother and sibling, literally 'fellow of the womb.' (186).

Yiğit Akın, in a similar vein to Özbudun's remark on the promotion of public welfare, elaborates further on the reproduction of the Ottoman paternal image during the early years of the Turkish Republic and suggests that "'benevolent father" (*devlet baba*) was one of the regime's legitimacy-providing myths' (444-445). Akın reads this as an attempt to fill the mythical gap left by the fall of the Ottoman Empire and to replace it with a modern state imagery of a caring father (*ibid.*). The national family reference that is constructed around a paternal figure is performed by Mustafa Kemal Atatürk, who was granted the surname of Atatürk which literally translates as 'Father Turk', or 'father of the Turks', by the national assembly in 1934.<sup>54</sup> Atatürk's image as the 'father of the Turks' is accompanied by this personal but publicly known 'benevolent father' image to his adopted children. The fact that he did not have a child of his own to suggest a patrilineal system of power made this father-of-the-nation image stronger. Indeed, Özyürek (2006) in her analysis of Atatürk as a parent, mentions that how followers of Atatürk (commonly referred as Kemalists) feel indebted to him and she associates this feeling with cultural parenthood practices in Turkey: 'When parents are the only providers, children are always considered indebted to them [...] According to the nationalist discourse, Atatürk is another parent, particularly a father, to whom citizens should feel indefinitely indebted' (109).

I suggest, that in his rally speech, Erdoğan resurrects, and re-appropriates, this *father-state* myth to reunify the dissolving *body politic* of the state. Regarding the importance of political myths, in *Reflections on Violence*,<sup>55</sup> Georges Sorel (1999) suggests that myths are 'expressions of a will to act' (28). He writes in his letter to Daniel Halévy which is included in place of an introduction to the 1908 publication, '[a]s long as there are no myths accepted by

---

<sup>54</sup> In that regard, Vamik D. Volkan and Normal Itzkowitz's work titled *The Immortal Atatürk: A Psychobiography*, presents a psychological study of Atatürk's life. Volkan later reflects on this work which in a nutshell suggests that the loss of his father at an early age, who sent him to a secular school, hence symbolised modernisation and his oedipal desire to save his religious mother impacted on Atatürk's vision on modern and secular reconstruction of the Turkish state as well as 'his own fulfillment of the role of "father" at the birth of Turkey'. (Volkan 2007: 239). The prominent Turkish historian Kemal Karpat disagrees – 'the development of Mustafa Kemal's personality and his ideas of reform appear to have resulted more from the existing sociopolitical and historical conditions than from oedipal complexes' – but does not provide an explanation on his adaptation of the father image except a general statement of its representation of authority (Karpat 1985:896).

<sup>55</sup> Parts of Georges Sorel's work that was to become *Reflections on Violence* first appeared in an Italian Journal as a series of articles published between 1905 and 1906. The collection of the essays was first published in a book form under the title *Réflexions sur la Violence* in 1908. In this research its English translation titled *Reflections on Violence* published in 1999 is being used.

the masses, one may go on talking of revolts indefinitely without ever provoking any revolutionary movement' (ibid.). What is noteworthy in Sorel's account is the crucial role myths, or political myths to be more precise, play in persuading masses to be willing to kill or be killed for a cause. In a similar fashion, the mythical imagery of the *father-state*, which was embodied in the material body of Atatürk, had been the uniting glue of the newly founded Turkish Republic. This time, Erdoğan is embodying the *father-state* through its repetition. The rally speech sounds rather informal and personal precisely because of this paternal style of his address. Erdoğan's *father-state* performance blends stately affairs with family affairs, as if the rally crowd is his confidant. Although at first it seems otherwise, this blend of state and family through his imaginary role of *father-state* does not depoliticise the killing of Elvan. Rather it carries a Hobbesian political claim that attributes all the responsibility to those who protest and revolt against the sovereign, even in the case of their death. In *Leviathan*, Hobbes writes that there are two forms of sovereign power, one paternal and the other by the voluntary engagement through the covenant: 'The attaining to this Sovereign Power, is by two ways, One, by Naturall force; as when a man maketh his children, to submit themselves, and their children to his government, as being able to destroy them if they refuse' (Hobbes 1991: 121).<sup>56</sup> Although, Hobbes categorises the paternal form of sovereign power as despotic and rather proposes *Leviathan* as its replacement, nonetheless, both gives the same reflex to opposition, whether it is children rebelling against their father or people rebelling against the sovereign. In that regard, the Turkish state myth, *father-state*, is situated at the intersection of *Leviathan*, the modern Western state myth, and the paternal power. Erdoğan's performance of the *father-state* is a performative response to the disobedient child and to the opposition at once, which he combines in his enemy assemblages.

### **Constructing the Enemy**

In order to comprehend Erdoğan's assemblages of enemies,<sup>57</sup> it is necessary to briefly present the turbulent political climate of the time. The local elections of 30 March 2014 had borne the

---

<sup>56</sup> I provide a cross-reading of this family metaphor with the possibility of civil war (*stasis*) in the context of what is commonly referred as the Turkey's 'Kurdish Question' in Yıldız, Ceylan Begüm. 2021. 'A State in Anomie: An Analysis of Modern Turkey's States of Exception' *States of Exception: Law, History, Theory*. Eds. Cosmin Sebastian Cercel, Gian-Giacomo Fusco and Simon Lavis. Oxon: Routledge.

<sup>57</sup> Here I use assemblages in reference to Jasbir K. Puar's (2017) *Terrorist Assemblages* in which Puar borrows the term assemblage from Deleuze and Guattari: '[...]A multiplicity has neither subject or object, only determinations, magnitudes and dimensions that cannot increase in number without the multiplicity changing in nature (the laws of combination therefore increase as the multiplicity grows)...An assemblage is precisely this increase in the dimension of a multiplicity that necessarily changes in nature as it expands its connections [...]' (212).

significance of being the first election to be held after the Gezi protests of June 2013. The nationwide protests which lasted throughout the summer of 2013 were followed by a high-profile corruption scandal which shook the AKP government until the local elections.<sup>58</sup> This is a period of what I refer as the state being undone. It is when the state's imaginary *body politic* dissolves, and when the omnipotent and omnipresent power that is attributed to this imaginary is put under scrutiny and challenged by the masses. Hence, the local elections of 2014, were burdened with the AKP government's desire to unite the imaginary once again. In order to do so, Erdoğan with a paternal tone, consulted the Schmittian rule book for creating ghostly enemies. At this point, the question is not whether such enemies do really exist but rather the 'conspiratorial imagination' that flourishes in the state in crises (Ertür 2016) and which in return defines, unifies and materialises the margins of the state. Erdoğan's rally speech frames a certain picture of the Turkish state through constructing an enemy with a capital 'E'. This giant enemy is as mythical as the *body politic* of the state with a capital 'S'. As its assemblage frames the borders of the state, it simultaneously contains the dissolving unity.<sup>59</sup>

Erdoğan claims that the ones who were involved in the nationwide Gezi protests and corruption scandal operation are elites who had been favoured by previous governments. He underlines over and over that it was him and his party who fought for the rights of veiled women. At this point, he recalls his paternal role once again and provides personal examples from the hardships of his own daughters while mentioning the 28 February 1997 military memorandum, which is commonly referred to as the post-modern coup.<sup>60</sup> As he addresses the

---

<sup>58</sup> Between December 17 to 25 some tape recordings began to circulate in social media which were a series of phone conversations between cabinet members, their sons and between Erdoğan and his family. It was claimed that those phone conversations took place on 17 December when police conducted raids on some high-profile businessmen and relatives of cabinet members with corruption and money laundering charges. The high-profile corruption investigation was later considered as the first action by the Gülen sect to influence politics in Turkey before the coup attempt of July 2016 which was claimed to be orchestrated by the Gülen sect. The prosecutor and police officers involved in the corruption investigation were either dismissed and arrested or had fled the country. Although Erdoğan and the AKP members argued against the originality of the leaked tapes, there is little clarity on the falsehood of the corruption operation and the content of the leaked tapes. For more on this issue see; 'Leaked Tapes Prompt Calls for Turkish PM to Resign'. 2014. *The Guardian*, 25 February. Accessed 28 September 2021. <https://www.theguardian.com/world/2014/feb/25/leaked-tapes-calls-Erdoğan-resign-turkish-pm> and 'Turkish PM Says Tapes of Talk with Son a Fabrication'. 2014. *Reuters*, 25 February. Accessed 28 September 2021. <https://www.reuters.com/article/us-turkey-Erdoğan/turkish-pm-says-tapes-of-talk-with-son-a-fabrication-idUSBREA1N1ZX20140225>.

<sup>59</sup> Here I am referring to Judith Butler's use of 'frame' in *Frames of War*, which at the same time recalls the meaning of 'to be framed', but more significantly the frame or the necessity to frame exposes the fact that there is something uncontainable, something that is already outside, which (is supposed to) make 'the very sense of inside possible, recognizable (Butler 2010: 8-9).

<sup>60</sup> After the National Security Council meeting on 28 February 1997 which was among the of head generals of armed forces and the Prime Minister, the PM of the time Necmettin Erbakan from the Welfare Party resigned after being forced to sign a list of decisions during the meeting. The decisions were announced by the National Security Council's website hence giving the name of 'post-modern coup'. Erbakan and his party were known by its conservative stance and were often referred to as the founder of national vision movement from which the AKP

women in the crowd, he says the post-modern coup was done against their freedom to wear veils. While the first enemy is the ghost of pre-AKP times, the second enemy is a familiar one. Erdoğan accuses Fethullah Gülen, the head of the Gülen sect, of treason and gives a list of advices to the crowd to follow against the Gülen sect's operations.<sup>61</sup> Erdoğan continues by suggesting that people who were involved in the Gezi protests and corruption scandal operation are neither concerned with environmental issues nor issues of corruption but rather those people are reacting against losing their advantageous position in society, that they are no longer favoured by the political power of the state since the beginning of the AKP regime. Erdoğan says, 'it is you they are concerned about, your sovereignty brought discomfort to them', and then he begins counting all the investments made to Gaziantep and to other south-eastern and eastern cities during the more than a decade long AKP government.

Tanıl Bora (2018) analyses the political terminology commonly used by Erdoğan. In reference to Erdoğan's rhetoric during the Gezi protests, Bora suggests that Erdoğan is choosing a nation, people or a folk, for himself (41-43). What Bora means by that is while Erdoğan excludes those who participated in the protests, by relating them to some phantasmatic enemy powers, in return he constructs a 'the true nation' ('asıl millet'), referring to those who supported his government during the protests (41). What Bora observes in Erdoğan's political terminology is the Schmittian friend/enemy distinction, which aims to unite a group of people, a nation, through declaring a common enemy. To briefly present this, according for Schmitt an enemy can simply mean to be in opposition: '[a]n enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity' (2007:28). He takes a leap in his train of thought and argues that such an enemy 'is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relationship' (ibid.). In a similar fashion, Erdoğan declares anyone who is critical of him and his party's government as enemies. He continuously repeats the list of enemies and according to the context, stacks up new ones to the existing assemblage, as he does in this rally speech regarding Elvan and his family.

---

originates. For more on this see; 'Turkish Military Leaders Held for Role in '97 Coup'. 2012. *The New York Times*, 12 April. Accessed 28 September 2021. <https://www.nytimes.com/2012/04/13/world/middleeast/turkey-detains-military-leaders-for-role-in-1997-coup.html>.

<sup>61</sup> Before the 2016 coup attempt, AKP and the Gülen movement were allies. It is a common perception that the December 2013 corruption investigations which involved Erdoğan's cabinet ministers and his family members, and which were believed to be orchestrated by Gülenist prosecutors, had shattered their allyship. For more on the AKP and Gülen sect see: Shaheen, Kareem. 2016. 'Erdoğan v the Gülenists: From Political Allies to Turkey's Bitter Rivals'. *The Guardian*, 19 July. Accessed 28 September 2021. <https://www.theguardian.com/world/2016/jul/19/thousands-detained-as-turkey-vows-to-smoke-out-gulen-supporters>

However, I would argue that what Schmitt's friend/enemy distinction actually signposts is the existential crisis of the state, a state of being undone. It is a state of undoing the unified imaginary of the state, when the fantasy of its omnipotent and omnipresent power, the mythical body politic, comes into question. Therefore, what Schmitt suggests through his friend/enemy distinction, which he presents as an unescapable necessity, is rather a quick fix to overcome this existential crisis of the state. It is not a coincidence that for Carl Schmitt political myths are driving forces to mobilise the masses for political ends. In the final chapter of *The Crisis of Parliamentary Democracy* (1988), originally published in 1923, Schmitt refers to George Sorel's work on myth and he writes, '[i]n direct intuition the enthusiastic mass creates a mythical image that pushes its energy forward and gives it the strength for martyrdom as well as the courage to use force. Only in this way can a people or a class become the engine of world history' (68).<sup>62</sup> In that regard, Erdoğan's revitalisation of the *father-state* is a performance of a fantasy which aims to mobilise the masses and to unite them under its mythical bodily image.

In *the Sublime Object of Ideology*, Žižek (2008 [1989]) compares the political performative of a king and a totalitarian leader. For the former Žižek writes, 'a king is a king because we treat him like one' and to keep this illusion the king relays his power to an 'external authority' – Žižek gives 'God, nature and some mythical past event' as examples – and that 'as soon as the performative mechanism which gives him his charismatic authority is demasked, the Master loses his power' (163). However, Žižek argues that this is not the case of the totalitarian leader, as their claim is rather, '[i]n myself, I'm nothing, I am what I am only as an expression, an embodiment, an executor of your will' (164). In other words, the totalitarian leader's reference to the People, the Class, the Nation 'exists only through and in its fetishistic representative, the Party and its Leader'; and he adds, 'the People are the 'real People' only in so far as they are embodied in their representative, the Party and its Leader' (ibid.). It is possible to cross-read Žižek's remarks in reference to Bora's note that Erdoğan chooses a nation for himself, and I propose an amendment that Erdoğan does not choose a nation to himself, but he constructs, or rather re-constructs, a nation that is embodied on the *father-state* image that he performs through his own material body.

---

<sup>62</sup> Schmitt refers to George Sorel's work on myth to conclude that parliamentary democracy is not the great political myth which mobilises the masses. However, Schmitt argues that it is not the project of parliamentary democracy but on the contrary the political ideas against parliamentary democracy which had been able to create such myths which successfully mobilised the masses and he quotes Mussolini; "[w]e have created a myth, this myth is a belief, a noble enthusiasm; it does not need to be reality, it is a striving and a hope, belief and courage. Our myth is the nation, the great nation which we want to make into a concrete reality for ourselves" (76).

## Two Sons

In the last part of his speech, Erdoğan compares the killing of Berkin Elvan with the killing of Burakcan Karamanoğlu who died during the clashes that took place right after Elvan's funeral ceremony in Kasımpaşa. Kasımpaşa is a neighbourhood situated next to Okmeydanı.<sup>63</sup> Despite their shared working-class fabric, while Okmeydanı has an established reputation of being a leftist and revolutionary neighbourhood, Kasımpaşa is a conservative neighbourhood with a strong AKP support. With the rise of Erdoğan, Kasımpaşa has also become a political signifier since Erdoğan is from this neighbourhood. 'Being from Kasımpaşa' is not only a signifier for a poor, conservative, domestic-immigrant population which greatly contributed to Erdoğan's 'people's leader' image as 'their savior against Turkish elites and Western imperialism',<sup>64</sup> but also has given him a 'no-nonsense character'<sup>65</sup> because the neighbourhood 'is also known for its strict conservative, moralist and macho subculture' (Baykan 2018: 126). Thus, often Erdoğan attributes his leadership qualities to the neighbourhood: 'my manliness, bluntness, and principled conduct derive from my roots [in Kasımpaşa]' (ibid.). Kasımpaşa and Okmeydanı are two neighbourhoods next to one another representing two polar opposites of Turkey's politics. From time to time groups within those rival neighbourhoods organise provocative attacks on one another. Shortly after Elvan's burial at the cemetery, police attacked the funeral mass without a warning.<sup>66</sup> Clashes resulted in the death of a Kasımpaşa veteran Burakcan Karamanoğlu. Erdoğan in the final part of his speech compares Karamanoğlu and Elvan. While labelling the latter as a terrorist, Erdoğan publicly mourns for the former:

That evening of the funeral, the Revolutionary People's Liberation Party-Front terrorist organisation comes to my hometown and martyrs our son Burakcan who came back from

---

<sup>63</sup> 'Kasımpaşa is located in the immediate periphery of the cosmopolitan Beyoğlu sub-province of Istanbul, alongside other conservative and low-income neighbourhoods, and has always been home to new provincial and poor immigrants of the city' (Baykan 2018: 126).

<sup>64</sup> Önder, Engin. 2018. 'Global Justice: The Man from Kasımpaşa' *Boston Review*, 11 January. Accessed 28 September 2021. <http://bostonreview.net/politics-global-justice/engin-onder-man-Kasımpaşa>

<sup>65</sup> Krajewski, Jenna. 2014. 'Turkey's Erdoğan Retains Working-Class Roots' *Al Jazeera*, 28 March. Accessed 28 September 2021. <https://www.aljazeera.com/indepth/features/2014/03/turkey-pm-retains-working-class-roots-2014327113735373532.html>

<sup>66</sup> The police's intervention was exceptionally violent. Halkevleri, a leftist organisation that focuses on educational needs in the low-income neighbourhoods, filed a criminal complaint with the accusations of 'intended murder' against the then Istanbul Governor, Istanbul Chief of Police and against other police officers who were on duty at the time. 'Berkin Elvan'ın Cenazesine Saldırı "Kasten Adam Öldürmeye Teşebbüs"tür". 2014. *Halkevleri*, 14 March. Accessed 28 September 2021. <http://www.halkevleri.org.tr/basin-aciklamalari/berkin-elvanin-cenazesine-saldiri-kasten-adam-oldurmeye-tesebbustur>. In 2019, in regard to another case file on the police's conduct, the Constitutional Court noted that 'the police attacked without any warnings beforehand' and concluded the prohibition of ill treatment (Art 17/3) has been violated. 'Non-Pecuniary Damages for Police Attack at Funeral of Berkin Elvan'. 2019. *Bianet*, 10 December. Accessed 28 September 2021. <https://bianet.org/english/law/216901-non-pecuniary-damages-for-police-attack-at-funeral-of-berkin-elvan>

his military service just three months ago. Burakcan did not have a slingshot in his hand, he did not have any weapon on him. He was just in front of his house, and they martyred him. The number of bullets collected from the street is 42! 42! The opposition party is acting together with such terrorists. The ones who killed our son are the illegal executioners of Kılıçdaroğlu [opposition party leader]. Yes, his illegal executioners!

In this dramatic ending, Erdoğan's slip of the tongue reveals that, for Erdoğan, there can be legal executioners in a jurisdiction that has abolished the death penalty. Perhaps by legal executioners Erdoğan refers to those who enact violence on behalf of the state, such as the police officer Dalgacı who is the main officer in suspected of killing Elvan. I discuss the legal handling of the officer Dalgacı in Chapter 4. In this section, however, what interests me is Erdoğan's comparison of Elvan and Karamanoğlu, which also serves as a signpost for Erdoğan's criteria of sanctioned and unsanctioned violence, and hence for accountability. As mentioned before in this chapter, Erdoğan responds to the killing of Elvan and responds to the accountability demands as a family matter. However, as I demonstrated above through the Turkish state myth of the *father-state*, Erdoğan's reference to family is political; and furthermore, as I propose in this section, it appears as a criterion for accepting or rejecting accountability demands. At this point it is important to stress that Erdoğan does not deny that Elvan was hit by a tear gas canister, but rather he intends to free the police from their responsibility as he asks the crowd, 'How could the police identify the age of a masked person throwing iron marbles with a slingshot?' Erdoğan presents the killing of Berkin Elvan as an unfortunate incident caused by Elvan's own poor decision in joining the protests and as an expected outcome of Elvan's own actions in mimicking terrorists. His description of Elvan, with a face cover and throwing iron marbles with a slingshot, although disproved during the trial process, serves as a reply to demands of accountability. For Erdoğan this description demonstrates the legitimacy of his killing. In the manner of the *father-state*, he exempts the police officers from being held to accountable; – *I forgive you* – and accuses Elvan of his death – *I accuse you*.

Erdoğan's comparison of two deaths is something out of Sophocles' famous tragedy *Antigone*,<sup>67</sup> as if Erdoğan is performing the role of Creon in glorifying the death of one and

---

<sup>67</sup> In this research I use H.D.F Kitto's translation of Sophocles' plays which is published as a part of the Oxford World's Classics series. See; Sophocles 1994 (1962).

shaming the other.<sup>68</sup> To briefly present the tragedy, two brothers, Eteocles and Polynices, lead opposite sides in Thebes's civil war and they both die fighting against each other. Creon, the ruler of Thebes, orders Eteocles to be honoured, while he publicly shames Polyneices by ordering him to be left unburied. As Timothy Gould, in 'The Unhappy Performative' (1995), remarks, Creon's announcement regarding Polyneices is an order and a performative speech: 'I here proclaim to the city that this man shall no one honor with a grave and none shall mourn' (35).<sup>69</sup> In a similar vein, by depicting the killing of Elvan as the tragic, but expected, death of a boy who was masked and who was armed with a slingshot and marbles, like terrorists, Erdoğan accuses Elvan of his own death: *I accuse you*. In other words, he orders the public not to hold anyone else accountable. Similar to what Gould observes in Creon's lines, Erdoğan's performative speech intends 'to have the force of a stigmatizing, descriptive fiat' (35) as he describes Elvan as a terrorist, a disobedient son.

Karamanoğlu stands as a model of a good son, who served in the military, and hence Erdoğan refers to him as a martyr although his death is unrelated to his military service. Erdoğan defines both Karamanoğlu and Elvan's deaths, and their meaning in reference to the role he performs as the *father-state*. By juxtaposing Karamanoğlu's death with Elvan's, Erdoğan constructs yet another friend/enemy narrative. This time, the mythical body of the

---

<sup>68</sup> At the foreword of Žižek's *Antigone* (2016), Hanif Kureishi while unpacking the complex family relations within the tragedy that binds Antigone to Creon, defines Creon the ruler in such words; 'Creon is a leader, a clever politician with a Mafia don side, a primal father to whom all the women must belong' (viii). In that regard, Creon shares similar traits with Erdoğan who is proudly bringing his Mafia don upbringing to the politics, who performs *father-state*, or in Kureishi's choice of words 'primal father' and who considers women as his responsibility; either solves their abiding difficulties (lifting the veil ban), or publicly shames the ungrateful ones (Elvan's mother).

<sup>69</sup> Those lines do not appear in H.D.F Kitto's translation of the play. We rather hear of the Creon's orders indirectly from Antigone when she reports to her sister Ismene;

'Our brother's burial. – Creon has ordained  
Honour for one, dishonour for the other.  
Eteocles, they day, has been entombed  
With every solemn rite and ceremony  
To do him honour in the world below;  
But as for Polyneices, Creon has ordered  
That none shall bury him or mourn for him;  
He must be left lie unwept, unburied,  
For hungry of prey to swoop and feast  
On his poor body, So he has decreed,  
Our noble Creon, to all the citizens:  
To you, to me. To me! And he is coming  
To make It public here. That no one may  
Be left in ignorance: nor does he hold it  
Of little moment: he who disobeys  
In any detail shall be put to death  
By public stoning in the streets of Thebes  
So it is now for you to show if you  
Are worthy, or unworthy, of your birth (3-4).

friend, which constitutes the *body politic*, and its enemy, which frames the *body politic* to unify and contain it, materialises through the dead bodies of Karamanoğlu and Elvan. The former, ‘our son’, whose obedience to *father-state* grants him martyrdom, and the latter, the disobedient other who should not be honoured with accountability. In this process of subjection, which ‘is not only a subordination but a securing and maintaining, a putting into place of a subject, a subjectivation’ (Butler 1993: 9), it is possible to hear resonances of Creon’s orders in Erdoğan’s speech: *I here proclaim to the city that this boy shall no one honour and none shall be punished but him*. In return, the rally setting provides Erdoğan the audience or rather the witness for his performativity to be effective; the ‘performative utterance is to be characterized as a kind of verbal performance or artefact, and hence it is to be assessed by its effectiveness with an audience (whether real or implicit or constructed)’ (Gould 1995: 24). The audience for the rally speech, however, is not in the position of a passive witness, but becomes a co-author to Erdoğan’s punishing act by booing the mother.<sup>70</sup>

Nonetheless, Erdoğan’s subjection of Elvan as a terrorist and a disobedient son whose death does not deserve an accountability process is the intentional doing of his *father-state* performativity which contains the possibilities of its failures. Erdoğan exposes that the paternal care of the *father-state* kills his children for their own sake, to save them from being disobedient. In that regard, while Erdoğan performs the *father-state* as a state myth to unite the dissolving fantasy of the Turkish state, at the same time, he performs the horrors of this fantasy. In *States of Terror*, in reference to Derrida, Aretxaga (2005) reminds us that state violence and its countering violence are reciprocal to one another. She writes:

[They] are produced, not arbitrarily, but within what Derrida (1994:97) has called a ‘phantomatic mode of production’: a structure and modus operandi which produce both the state and terrorism as fetishes of each other, constructing reality as an endless play of mirror images. This play of terrorism is what makes the State (with a capital *S*) and Terrorism (with a capital *T*) so real, organizing political life as a phantasmatic universe where the “really real” is always somewhere else, always eluding us’ (229).

---

<sup>70</sup> It is possible to suggest that the violence inflicted on the mother, Gülsüm Elvan, is due to her non-acceptance of her son’s death as his fate. Recalling Benjamin’s reading of Niobe, it is possible to say that Elvan’s mother challenges the fate, that is state violence as she does not obediently seek help from the *father-state* but rather accuses the *father-state* for killing her son.

It is possible to cross-read Aretxaga's remarks above with Cavell's notion on *passionate utterances*, in which he read these as invitations to disorder. Indeed, Erdoğan's call, which accuses Elvan and his mother, and demands an affirmative response from the rally crowd receives yet another response, this time from those he refers to as 'terrorists'. By owning Berkin Elvan's legacy, the Revolutionary People's Liberation Front, responds to the unaccountability of Elvan's killing by taking hostage the then prosecutor in charge of the Elvan investigation, which I discuss in the following chapter.

### Chapter 3: Countering Violence

It is 31 March 2015. It has been two years since Elvan was shot by a police tear gas canister and a year since he died. The investigation has been ongoing ever since Elvan was shot in June 2013, while the prosecutor in charge of the investigation has kept changing.<sup>71</sup> The footage which is breaking the news in Turkey on that day is a video statement which shows a man wearing a red face covering holding a gun to the head of the prosecutor Mehmet Selim Kiraz, who was the fifth prosecutor in charge of Belkin Elvan's investigation at the time, in his office at the Istanbul Court House.<sup>72</sup> As Kiraz sits under the pointed gun with his hands tied and mouth gagged, the man with the red face cover begins to speak: 'We are Revolutionary People's Liberation Front fighters. Here, today we are holding this prosecutor in hostage, as he is the chief prosecutor of Berkin Elvan's murder investigation. And yet, the police officers, who are responsible for Elvan's death, still have not been punished. Hence, we are holding the prosecutor hostage' (Yılmaz and Yakşi 2017: 59).<sup>73</sup> As the hostage-taking event suspends the everyday legal operation through a violent intervention in the prosecutor's office at the courthouse, the video-statement reaches beyond these spatial limits and takes every spectator hostage. The hostage-taking video statement punctures the overstretching of time with an urgency; it marks a date on the prolonged investigation over Elvan's killing – justice *here-now*.

The Revolutionary People's Liberation Front (DHKP-C), commonly referred to as People's Front or Party-Front, is an armed leftist organisation which is known for sensational violent actions.<sup>74</sup> As I explain further in the first section of this chapter, the People's Front is

---

<sup>71</sup> The Elvan family filed a criminal complaint on the grounds of direct intention to kill; however, on 25 June 2013 the Istanbul prosecution accepted the complaint on the grounds of excessive use of force and finally the indictment brought probable intent to kill charges against one police officer. I present a detailed account of the legal process in the following chapter.

<sup>72</sup> The video statement is no longer accessible through online media channels and social media after a court order issued on 6 April 2015 ('Turkey Threatens Google with Ban Over Hostage Image'. 2015. *BBC*. 7 April. Accessed 28 September 2021. <https://www.bbc.co.uk/news/technology-32194913> ) Although, it is possible to find national and international media coverage on the issue, at times I refer to my personal archive unless noted otherwise.

<sup>73</sup> Translation from its Turkish original belongs to me. For this translation I compared the video statement from my personal archive with the one published by the Revolutionary People's Liberation Front in a booklet they released on 19 June 2017. The booklet is dedicated to Şafak Yayla, Bahtiyar Doğruyol and Elif Sultan Kalsen. The first two are the militants who conducted the hostage-taking action, and the latter is the militant who carried out an armed attack at a police headquarter in Istanbul to commemorate the martyrdom of the former two militants. The booklet is an important source as it contains information which had been removed from the internet, such as the transcript of the statement, the transcript of some phone interviews conducted by the militants during the action, as well biographies of the militants and a brief report on the negotiations written by the mediating lawyers. Since the booklet does not have a publishing date, I take its release date as the publishing date. Although the book is accessible online at *Halkın Sesi* website which is the People's Front's media and communications channel, the exact link of the website changes occasionally due to censorship.

<sup>74</sup> The People's Front has been listed as a terrorist organisation in Turkey, as well as in the European Union and US. For a brief profile on the People's Front see; 'Profile: Turkey's Marxist DHKP-C'. 2013. *BBC*, 2 February. Accessed 28 September 2021. <https://www.bbc.co.uk/news/world-europe-21296893>

organised within the working-class, urban neighbourhoods of Istanbul, especially in Okmeydanı where the Elvan family resides. It is necessary to note here that they are the terrorists who, according to Erdoğan, Elvan had imitated. In that regard, Erdoğan's *father-state* performance can be considered as a call, a provocation, directed towards the People's Front. In this chapter, I approach the hostage-taking action as a countering violence, which, I argue, exhibits that Elvan's death was not the tragic fate of a disobedient son, but rather it was an active killing by the ones who performed violence on behalf of the state. As I discuss further in the first section of this chapter, I understand the People's Front's countering violence in relation to the state violence, which is more than a simple reaction but rather imitates, and aims to replace, the state violence and its legal system. Thus, I suggest the term counter-violence to emphasise the double movement within the People's Front's violent action which, on the one hand, refuses the existing political and legal order and, on the other hand, re-performs an idealised version of it. I explore this through the conceptual framework of *counter*. In addition to countering state violence with counter-violence, their act is a form of disobedience against the state's subjection of naming the terrorist. In a performative manner, the People's Front militant's act is a performance that re-constructs their subjectivity against the state, which I discuss in detail further. In other words, I consider the People's Front's counter-violence as an act of counter-subjection as well, while exploring the agency of the figure of the revolutionary martyr in relation to its appropriation of deadly fate, 'a grim yet political act of resistance or refusal of the injustice of an order that has become some kind of fate [...] a way of grappling with this fate by taking it into his [one's] own hands' (Bargu 2016: 29).<sup>75</sup>

In that regard, it is possible to suggest that the hostage-taking action enacts a tragedy. In a similar fashion to tragedy, as in the literary genre, the hostage-taking operation ended with a catastrophe. At around eight-thirty in the evening, Special Forces carried out an operation which ended with the death of the People's Front militants and the prosecutor.<sup>76</sup> In *The Origin of German Tragic Drama* (1998 [1963]), while analysing the differences and connections between Greek tragedy and German tragic drama (*Trauerspiel*), Walter Benjamin notes the juxtaposition of what he calls as the *martyr-drama* and the *drama of the tyrant*, a peculiar form

---

<sup>75</sup> Banu Bargu makes this comment in relation to Mohammed Bouazizi, the 26-year-old street vendor who set himself ablaze in 2010 in Tunisia, whose action sparked the nationwide protests which soon spread regionally, commonly referred as the Arab Spring.

<sup>76</sup> The footage of the operation was circulated via national news agency Anadolu Ajansı (Anadolu Agency) to respond to the criticism over the handling of the hostage-taking event. The CCTV footage claims to demonstrate that the operation took place right after hearing gun shots from the room. However, from the released footage it is not possible to locate the origin of the gun shots. See Anadolu Agency, 2016. 'Savcı Kiraz'ın Şehit Edildiği Ana İlişkin Operasyonun Görüntüleri' *YouTube video*, 0:31, 28 March. Accessed 28 September 2021. <https://www.youtube.com/watch?v=ODnfoCUCTUg>

which, according to Benjamin, originally belongs to tragedy but is later adapted by the baroque drama (69). To put it briefly, while the former is a tale of personal sufferings of ‘a radical stoic’, the latter refers to the difficult decision-making process of a sovereign,<sup>77</sup> which is followed by ‘the downfall of the tyrant’ (72-73). According to Benjamin, these two figures appear to be intertwined, ‘the tyrant and the martyr are but the two faces of the monarch’ (69). Following Benjamin’s remarks, I read the hostage-taking action as a real-life tragedy, which shines a light onto the state and onto its violent manifestation from the other side of the monarch which, to put it in Benjamin’s terms, uncovers the *stately performative*’s disguise of state violence as the protagonists; in other words the martyrs, progress towards their deadly fate. As the mythical construction of the state and state’s claim on the monopoly of violence dissolves before our eyes, the hostage-taking action reveals the *drama of the tyrant*, a heroic act that is conditioned to the death of the martyr.

In order to address the self-sacrificial act of defiance in the People’s Front’s hostage-taking action, I present a cross-reading with Sophocles’ *Antigone* (1994 [1962]). To recall the plot of Sophocles’s famous tragedy briefly, the heroine Antigone goes against the unjust, tyrannical, sovereign law of Creon, who orders Polyneices to be left unburied. Her defiance brings her death, but it also reveals the *drama of the tyrant* as the defiance reveals the tyrannical violence of Creon and brings his ruin. In the previous chapter, I mention Creon’s order and his comparison of the two dead brothers, as I unpacked Erdoğan’s comparison of Berkin Elvan and Burakcan Karamanoğlu. As I discuss further, Antigone’s self-sacrificial action sheds a light on the People’s Front militant’s self-sacrificial action, as I draw parallels between the People’s Front militants and Antigone’s claim to bring justice to the dead. Although I present a detailed discussion on the matter further in the chapter, it is necessary to note there that I do not disregard the gendered aspect of Antigone, the celebrated woman heroine who rebels against the male sovereign and his tyrant (male) laws. However, my cross-gendered reading of Antigone with the two male People’s Front militants offers an alternative reading beyond gender norms, which emphasises her disposition as a defiant subject beyond the limits of a grieving sister, or a mad woman. From that perspective, Antigone presents us a unique lens through which to consider the positions of the militants, as well as the meanings and claims of their self-sacrificial action against the state. In addition, as I argue in this chapter, when

---

<sup>77</sup> It is possible to trace a Schmittian vein in Benjamin’s reading of the drama of the tyrant, as he writes; ‘The function of the tyrant is the restoration of order in the state of emergency a dictatorship whose utopian goal will always be to replace the unpredictability of historical accident with the iron constitution of the laws of nature’ (74).

Antigone is stripped of her gender norms, in other words when her action is considered as something more than a heroic enactment of her womanly fate, it reveals a question – *Why must Antigone die?* – which I ask in relation to the deadly fate of the People’s Front militants. I inquire into the self-sacrificial character of the action to reveal the interplay between the *martyr-drama* and the *drama of the tyrant*; the latter gets exposed as the former approach to its end.

### ***Militant-martyrs***

In Sophocles’s tragedy, the heroine Antigone buries her unburied brother, despite knowing this act is punishable by death.<sup>78</sup> Antigone’s act of defiance defies reason, through which the law operates. The act is irrational, unintelligible to Creon as he asks whether Antigone knew her act was forbidden: ‘Did you not know that this had been forbidden?’ When Antigone affirms that she knew, Creon asks ‘And so you dared to disobey the law?’ (16).

Judith Butler (2000) in their reading of Antigone in *Antigone’s Claim*, registers this as a sovereign expectation: ‘He [Creon] expects that his word will govern her deeds, and she speaks back to him, countering his sovereign speech act by asserting her own sovereignty’ (11). As I draw parallels between Creon’s order and Erdoğan’s *stately performative* in the previous chapter, it is possible to observe a similar expectation in Erdoğan’s *father-state* performative of accusing Elvan of his own death, that Erdoğan expects everyone to accept his word and not hold anyone else accountable for Elvan’s death. As for Erdoğan, Elvan’s death serves as evidence for his disobedience to the *father-state*; there is no one else to be held accountable. This dynamic between the sovereign expectation of obedience and its defiance recalls the discussion on subjection, or *interpellation*, in Chapter 1. I read this along the lines of the expectation of *interpellation*, which I explain in relation to the hailer police officer’s expectation to dominate and subjugate the hailed subject. Both Antigone and the militants of the hostage-taking action defy their subjection as they disobey the legal order, even though this brings their own deaths. In that regard, both acts are self-sacrificial actions which are unintelligible to the ones who claim the powers of the state and perform the state and its laws: *Why would someone abandon their life in the name of someone else who is already dead?* To unpack this, below, I present a reading of the People’s Front militants’ act of defiance in

---

<sup>78</sup> Antigone tells her sister: ‘[...] he who disobeys  
In any detail shall be put to death  
By public stoning in the streets of Thebes.  
So it is now for you to show if you  
Are worthy, or unworthy, of your birth’ (Sophocles 1994: 4)

response to the state's subjection. To do so, first I introduce the figure of the martyr, or revolutionary martyr to be precise, within the repertoire of Turkey's radical left; and then I discuss this disposition in relation to the state and its subjection through the cross-reading of Antigone.

Shela Sheikh (2013), in her doctoral thesis on Lebanese martyrdom testimonies – which consist of series of martyrdom video recordings originated in Lebanon after the Israeli invasion of June 1982<sup>79</sup> – provides a detailed account on the etymology and history of the word 'martyr'. She writes:

The English word 'martyr' originates from Old English *matir*, via the ecclesiastical Latin *martyr*, from the Greek *martur*, meaning 'witness'; an expression used in Greek courts. It was not until the second century AD that the word acquired the technical signification within Christian discourse of dying for a cause; choosing to suffer death rather than renouncing one's beliefs; of one whose suffering and death bore witness to the truth of Jesus' passion and resurrection. With this new meaning, the old sense of bearing witness (testifying) in a court gradually became blurred. This same conjunction is evident in Arabic, in which the word *shahīd* (pl. *suhadā*), meaning 'martyr' (31).

To follow Sheikh's explanation, the Turkish word for martyr *şehit* which derives from its Arabic origin, also bears the same meaning.<sup>80</sup> Here I do not aim to present a reading of the meaning of martyrdom based on its etymological roots;<sup>81</sup> nonetheless, it provides us with an orientation to grasp its usage in Turkey's radical left. What is striking in Sheikh's definition, however, is that despite the common belief, the martyr is not foundationally a religious figure

---

<sup>79</sup> The Lebanese martyrdom videos share a common trait with the hostage-taking video statement, as both mediums reach the spectators who serve as witnesses to the martyrdom of the militants which is a condition for their martyrdom to be recognised. However, martyrs too claim to be witnesses, i.e., witnesses of the truth or violence. Sheikh explains the intertwined relationship between the martyr and witness: 'Upon a brief survey of historical and religious studies, as well as etymological analyses, it quickly becomes apparent that the concept of martyrdom entails or implies some form of witnessing and/or testifying (i.e. bearing witness); that [...] the martyr is a witness and that his/her martyrdom testifies and is subsequently witnessed by an audience, with the witnessing and bearing witness of the audience being necessary for the martyrdom to be recognised and authenticated as such; in other words, for the "martyrdom" to take place' (18).

<sup>80</sup> In Turkish *şahit* is more commonly used for witness. Both *şehit* and *şahit* derives from the same Arabic root *sh-h-d* which, as Sheikh explains through citing from Nader el- Bizri by providing an Islamic reading of its etymology, 'refer to the experience of being present in a spectacle and assembly, or to having evidential attestation of the happening of an event, while also being a literal manner of affirming the beholding of an incident with ones' own eyes' (32).

<sup>81</sup> Likewise, despite providing a detailed analysis on its etymology Sheikh also approaches such readings with a caution: 'whilst we draw from etymological sources as catalyst for readings to follow, the authority of etymology is always regarded with some degree of suspicion' (33).

but rather a figure related to legal procedure as it is used in Greek courts. Perhaps this finding can be associated to the People's Front militants' claim of bringing justice to Berkin Elvan through the hostage-taking event. Not only do they claim to bear witness to Elvan's killing at an imaginary court, but they also aim to carry out a public tribunal to bring justice, which I discuss further in the next section while analysing their demands.

Regarding the figure of the martyr in Turkey's radical left, however, it is possible to trace a combination of religious and non-religious connotations of martyrdom. On the one hand, Turkey's radical left is known to be a non-religious, secular movement, while its discourses and especially martyrdom practices are heavily influenced by Alevi culture.<sup>82</sup> Banu Bargu (2014) in her detailed work titled *Starve and Immolate* on the People's-Front-led prison hunger strikes of the early 2000s in Turkey, elaborates on the significance of martyrdom in Turkey's radical left tradition.<sup>83</sup> Bargu argues that it would be wrong to relate the martyrdom practices of Turkey's radical left only to Alevi martyrdom culture; instead she refers to such practices as *sacrificial Marxism* which, she suggests, corresponds to 'a secularised political theology', as a form of 'political mysticism' (237). Regarding the discourse and practice of martyrdom in Marxist leftist organisations in Turkey, Bargu writes, '[i]n the theologization of

---

<sup>82</sup> Alevism is an Islam-oriented belief system that is referred to as a heterodox Islamic belief due to diverging from common practices of Sunni and Shia. As Martin van Bruinessen (1996) notes 'Prayer (*namaz*), the fast in Ramadan, zakat and hajj are alien practices to most Alevi communities. Instead, they have their own religious ceremonies (*cem*), officiated by holy men (*dede*) belonging to a hereditary priestly caste' (7). Alevi ceremonies and rituals have strong references to martyrdom. Michael Reinhard Hess (2007) in his detailed study on the issue, titled 'Alevi Martyr Figures', highlights that there are four martyr figures, al-Hallag, al-Husayn, Fazlollah Astarabadi and Nesimi, all of whom 'are regarded as martyrs in the true sense of the word. For they are believed to have been killed for the public profession of their faith' (275). Furthermore, Reinhard Hess notes that martyrdom is not only a religious symbol in Alevi practices but 'is also an integral element of the ceremony itself' as 'the ceremony includes a declaration of one's willingness to go so far as to die for the Way if necessary' (276). In her chapter on the construction of martyrdom in radical left organisations in Turkey Eylem Özkaya Laselle points out to that overlapping of radical left and Alevi culture during the politization of Alevism. Özkaya Laselle (2016) notes that this process resulted in members of Alevi community to being active members of Turkey's radical left, which on the one hand enabled the radical left to reach out to the rural areas and on the other hand, transformed and modernised the Alevi culture (325). This overlap of Alevi community and radical left can be observed in number of working-class neighbourhoods where the People's Front is active and strong, such as Okmeydanı, where the Elvan family resides.

<sup>83</sup> In October 2000, a mass hunger strike was launched by prisoners against the high security prisons, commonly referred as F type and cellular imprisonment in Turkey. The People's Front led death fasts called on other radical leftist organisations to join to which the Turkish radical left responded with temporarily solidarity hunger strikes while the Kurdish movement denied participation. Nonetheless, what initially began as hunger strike of some eight hundred prisoners had escalated to a nationwide movement against F type prisons as it gained momentum outside of prisons through the initiatives of various civil society organisations, bar associations, trade unions, human rights organisations and artist initiatives within Turkey. It also triggered solidarity hunger strikes to take place in European prisons. The government carried out a violent security operation upon the prisons participating in the hunger strike called 'Operation Return to Life' which caused more casualties. Hunger strikes to the death had continued until May 2006 and hundred and twenty-two people died in the death fast struggle. Bargu lists the causes of death as: self-starvation due to death fast, self-immolation (self-immolation while on death fast or suicide attack), killed (killed while on hunger strike or died of medical neglect) (196-213).

leftist politics, martyrdom combines the secular and the sacred, the past and the present, the living and the dead'. (260). Bargu gives the name *militant-martyr* to define this subject who operates 'as a dialectic between the militant and the martyr, the human and the weapon, the living and the dead, steered by the "consciousness of sacrifice", which now replaces "class consciousness" in more conventional Marxism' (241). Furthermore, Bargu describes the People's Front ideological strategy as 'vanguardist warfare' which carries out sensational actions against agents of imperialism, finance capitalism, state officials, torturers and drug dealers 'to display the vulnerability of existing order and [to] expose the political "truths" that are concealed from the masses by the "artificial balance"' (234).

Following Bargu's observations, I consider the People's Front militants Şafak Yayla and Bahtiyar Doğruyol, who carried out the hostage-taking action, as *militant-martyrs*. Not only were they *militant* subjects who were devoted to a cause, that is, devoted enough to sacrifice themselves on behalf of the cause, but also *martyrs* in the sense that they believed their self-sacrifice would reveal the truth of Elvan's death, and of state violence. This devotion has a transforming effect on the subject, as Bargu notes: 'In the transformation of human life into a weapon, there is both the desire to pursue particular political goals and an assertion of subjectivity' (17). In that regard, the transformation of the subject 'from human life into a weapon' indicates a process of counter-subjection that rejects its subordination. As Butler puts it, 'subjection is a subordination that the subject brings on itself; yet if subjection produces a subject and a subject is the precondition of agency, then subjection is the account by which a subject becomes the guarantor of its resistance and opposition' (Butler 1997:14). In other words, the People's Front militants' state subjection as terrorists serves as a ground, a guarantor, for their resistance and hence for their transformation into *militant-martyrs*. However, this process of counter-subjection is rather entangled with its subjection, as is evident in its reappropriation of the deadly fate that is attributed to the subject by the state. At this point, I recall Antigone to disclose this entanglement.

To begin with, I would like to address the gender aspect of Antigone, as her entanglement with the state, or rather with the sovereign, occurs in a gendered form.<sup>84</sup> The interest in reading Antigone begins in political philosophy with G.W.F. Hegel, who establishes the relation and clash between Antigone and Creon in regards to the clash between natural law

---

<sup>84</sup> Judith Butler reminds their readers in *Antigone's Claim* that 'women were not citizens in classical Athens, even though the civic culture was imbued with valences of femininity' (86 n.15). This fact highlights the significance of gender and gender roles in Antigone.

and state law, as Hegel attributes the former to womanhood and latter to manhood.<sup>85</sup> Following this, in the literature there is a great diversity of readings of Antigone and her legacy, although there seems to be a consensus over the significance of her gender. In the feminist scholarship and critical literature she is often considered a rebel, a martyr, an unruly woman who exposes the limits of (manly) sovereignty.<sup>86</sup> In *Antigone Interrupted*, Bonnie Honig (2013), summarises the canonised readings of Antigone, as ‘heroic conscience objector who on political grounds violates an unjust law, challenges a powerful sovereign, and all by herself dares speak truth to power’, ‘humanist lamenter of the dead, grieving sister/mother/daughter’ and ‘monstrous creature of desire [...] even passionately eager, to die for her cause’ (7). Although there are obvious similarities between the People’s Front militants and Antigone in terms of carrying out self-sacrificial actions with the claim of bringing justice to the dead, how is it possible to read Antigone beyond her most significant trait? Or, to put it in other words, what does Antigone as a man tell us?

Nüket Sirman’s (2016) ‘When Antigone Is a Man’ provides an opening to cross-read Antigone with the two male militants. Sirman analysis ‘the case of a man who demands that the state return the remains of his dead guerrilla brother and then goes on a hunger strike [...] a woman journalist links his act to Antigone and finally the man ends up accepting the Antigone name’ (192). Sirman reads this act as an act of transgression towards ‘both gender and kinship norms’, as she notes, ‘[i]f Antigone occupied the place of the man in deciding to bury her brother, Hüsnü Yıldız seems to occupy the place of the woman in claiming the right to bury his brother’s remains’ (198). Indeed, in *Antigone’s Claim* Butler points to the passage in which Creon responds to Antigone’s act in these words: ‘Now I am no man, but she the man [*aner*]’ (9). Elena Loizidou (2007) suggests that Butler uses this passage ‘to demonstrate that there is no stabilisation of gender in the play or, more generally, there is rather a flowing temporality of genders [...]’ (83). In Sirman’s reading, what results in the naming of the man as Antigone is his self-sacrificial act for the burial right of his dead brother, who in a similar vein to

---

<sup>85</sup> As Butler (2000) summarises in *the Phenomenology of the Spirit* ‘Hegel claims that Antigone represents the law of the household gods [...] and that Creon represents the law of the state. He insists that the conflict between them is one in which kinship must give way to state authority as the final arbiter of justice’ (4-5). Hegel, also writes about Antigone in *Aesthetics: Lectures on Fine Art Volume II* (1975) in which he elaborates in a similar vein, ‘in Antigone, the “spiritual power” of family piety is independently personified in her, while Creon is the independent personification of law and the state’ (1163 n1). What is interesting is that Hegel presents the clash in terms of state’s expectation of obedience and paternal responsibility to care; ‘Antigone lives under the political authority of Creon [the present King]; she is herself the daughter of a King [Oedipus] and the fiancée of Haemon [Creon’s son], so that she ought to pay obedience to the royal command. But Creon too, as father and husband, should have respected the sacred tie of blood and not ordered anything against its pious observance (1217).

<sup>86</sup> The edited collection by Fanny Söderbäck presents a good selection of feminist readings of Antigone. See Söderbäck 2010.

Antigone's unburied brother, was considered an enemy of the state. Sirman reads, the man's self-sacrificial act, in relation to Antigone's, as 'an act that places the actor in a position of vulnerability' and elaborates further:

What these actions undertake in response to necropolitics is to remove the repressive policies from the domain of the political and place them with the domain of the moral. This amounts to an attempt to delegitimize the state itself, as it is presently constituted. The immorality of denying a proper burial becomes equivalent to letting a man die a little every single day in full view of the public (197).<sup>87</sup>

Sirman's analysis of Antigone as a man coincides with the previous remarks by Banu Bargu that the self-sacrificial actions aim to reveal the truth of the state. Surely, the People's Front's hostage-taking action is not a self-sacrificial action, but rather, it is a violent action that targets the prosecutor. I unpack this further in this chapter. However, my inquiry here is regarding the agency of *militant-martyr*. Although the People's Front's action is not simply a self-sacrificial action, similar to Antigone as mentioned at the beginning of this section, the militants know very well that their act would bring their death. In that regard, to put it in Sirman's perspective, I suggest Antigone's and the militant's defiance indicate to vulnerability as a position; 'I would like to be able to talk about the becoming vulnerable not of a subject, but a position, a relation to power, that brings with it unintelligibility and thereby vulnerability' (192). What is striking in Sirman's analysis is her reading of vulnerability beyond subject, which on the one hand, sheds a light onto the agency of Antigone beyond gender norms, i.e., as a vulnerable woman who mourns eternally, and, on the other hand, reveals that vulnerability is something related to 'the existing scheme of power and intelligibility'(ibid). Following Sirman's observations, I argue that the two male militants of the hostage-taking action not only act vulnerably as they carry out a self-sacrificial action, but also act from a position of vulnerability which, similar to Antigone, transgresses kinship roles. Although they are not related by blood to Berkin Elvan, they share a kinship through their position of being the vulnerable ones in relation to the state who are subjectified as the disobedient sons of the *father-state*, a kinship through a shared deadly fate which they re-construct through the codes of comradeship, militancy and martyrdom.

---

<sup>87</sup> Sirman refers to *necropolitics*, a term coined by Achille Mbembe (2003) which suggests 'to exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power' (12).

Following Sirman's observations, I read her analysis on vulnerability in relation to fate, or rather the state violence that disguises itself as fate, which I introduced in Chapter 1. What Sirman registers as vulnerability is the deathly fate that is attributed to some subjects by the *father-state*, that is, when their death is disguised as fate. Regarding this, Banu Bargu's (2016) reading of the death of Mohamed Bouazizi, the street vendor who set himself ablaze in Tunisia in 2010, presents an analysis of self-immolation and self-sacrificial actions through the lens of fate. Her analysis on the deadly fate of Bouazizi shares similarities with Sirman's reading of vulnerability, as Bargu emphasises on Bouazizi's position within 'the existing scheme of power', as Sirman puts it. In a similar vein to Sirman, Bargu notes; 'Bouazizi's self-killing is a testament to the absence of a collective movement and the helpless solitude experience by the individual before an existing order, whose oppression and injustice now appear to be some kind of fate' (28). Furthermore, after a brief elaboration on fate, Banu concludes that the Hobbesian the figure of the sovereign is the bearer of the fate in the modern state. 'Against the theological concept of fate, Hobbes places the artificial fate of the state',<sup>88</sup> which, according to Bargu does not only signify a control over fate through reason but also indicates to an economy of fate, 'to control fate by deciding and distributing fatality' (31). Finally, Bargu notes that the distribution of fatality is unequal, which 'does not merely produce some populations always closer to death than the rest. It also leads to new forms of resistance that emerge out of these increasingly invisibilized, alterized, "surplus" populations that are ever more criminalized, demobilized, punished, or left to die' (32). Berkin Elvan and the militants Şafak Yayla and Bahtiyar Doğruyol share a vulnerable position in relation to the state. They are the ones who the police hail as suspects, who are already subjectified as disobedient sons, even before enacting their disobedience. They are those who are closer to death, whose fate is death and whose deaths are fate in the economy of the modern state. Following the discussion on fate in Chapter 1, in which I suggest Berkin Elvan's deadly encounter with the police is rendered as his own fate due to his subjection as a disobedient son, it is possible to argue that People's

---

<sup>88</sup> Bargu explains this in detail: 'In Hobbes we also find that the originary ambiguities in the etymology of fate are brought together in the figure of the sovereign, a figure that now gains an impersonal, public, even collective meaning. On the one hand, the sovereign speaks (*fari*) and his speech becomes the law; this fits both with his role as the "mortal god" and, because sovereignty is produced through the authorization of individuals constituting the commonwealth, with the idea that it is the people speaking through the sovereign. On the other hand, the speech of the sovereign, the "thing spoken" (*fata*) is the allocation to each man what will fall to his lot by law, that is, the dispensation of punishments, including death (*fatalis*), in return for the defiance of the law or the disruption of security. In each sense, the sovereign and, indirectly, the individuals in their collective capacity of authorizing the sovereign, are substituted for the divine as the ultimate arbiter of fate' (31).

Front militants re-enact this scenario by putting themselves in a vulnerable position which exposes the distribution of deadly fate.<sup>89</sup>

As a final point, I would like to turn my focus to the significance of the imagery used in the video statement in order to expand on the militants' association with Berkin Elvan. The video-statement captures a usual office setting which was disturbed by an extraordinary event. As the militants list their demands, three posters, which obviously do not belong to the prosecutor's office, stand out. The posters set the scene not only as they served as décors for the video-statement, but also, they convey the message of the action.



**Figure 2:** People's Front's Hostage-Taking  
Sol Haber @solhaberportali, Twitter, 31 March 2015, 1:49 pm

What is significant in this constellation is Berkin Elvan's image, which is placed next to two organisational symbols, one red with a yellow star, the other red with a hammer and sickle

---

<sup>89</sup> Indeed, Julia Ng, in her keynote address at the Working with Benjamin on Law workshop, which was held between 15 and 17 July 2021, presents a reading on Benjamin's elaborations on law. Ng points out that in a Benjaminian sense, what transforms Niobe into stone is guilt and that by turning into a stone her life transforms into materiality. At this point, Ng recalls Antigone and notes that Benjamin would have known Hölderlin's translation of Antigone. By drawing parallels between Niobe and Antigone, Ng suggests that for Benjamin law is established at the moment when life transforms into matter. Law, which operates through guilt and governs debt, invests in life as matter. Furthermore, Ng relates law's operation to the position of vulnerability by noting that law imputes violence onto beings that are relationally vulnerable. I relate Ng's observations to Bargu's analysis of the economy of deadly fate, which could be read as transformation of life into a matter. Thus, law renders life vulnerable and creates vulnerable positions against the state and its violence. Finally, Ng concludes with an observation on how the police and their violence operate more crudely in vulnerable areas, which recalls the police's violent presence in the poor urban neighbourhood of Okmeydanı, where Elvan was shot and where the People's Front is organised. Julia Ng's keynote address can be reached at ZfL Berlin. 2021. "Julia Ng: Benjamin on Law" *YouTube video*, 33:43, 9 July. Accessed 28 September 2021. [https://www.youtube.com/watch?v=DnGaTvvJU-Q&list=PLRwXH9t33XB4-69pnvx8i\\_Ykmv2ZY9Nu1](https://www.youtube.com/watch?v=DnGaTvvJU-Q&list=PLRwXH9t33XB4-69pnvx8i_Ykmv2ZY9Nu1)

placed inside a red star circled in yellow. The third image displays Berkin Elvan with a slingshot in one hand and making a victory sign with the other. His face is disguised with a red face cover similar to that worn by the People's Front militant, and below his picture is written: 'We want Berkin's killers'.<sup>90</sup> While the two organisational flags and symbols locate the action's place within the complex map of Turkey's leftist organisations, relating the action to a certain revolutionary historiography, the image of Berkin Elvan sets the objective of the action while associating Elvan with the revolutionary legacy.<sup>91</sup> In that regard, this constellation consisting of party flags, revolutionary symbols and Elvan's image transgresses traditional kinship norms and binds Elvan and the militants in a kinship of martyrdom; and in doing so, it re-constructs both their own and Elvan's subjection.

Significantly, the image of Elvan corresponds with Erdoğan's description of him at the rally speech: 'a child who was among the terror groups whose face was masked, with a slingshot put into his hand and iron marbles in his pocket' (Parti Mitingleri 2014). In the aftermath of his death, this image of Elvan was circulated in the media, casting doubts on his innocence. Even though the Elvan family objected to these manipulations, stating that the picture did not belong to the day he was shot, Erdoğan and other state officials kept referring to this image of Elvan as if it belonged to that day. At first, the People's Front's usage of this image might appear to be a contradiction; however, I suggest its usage can be understood in relation to the previous discussion on the shared position of vulnerability and deadly fate. The People's Front's usage of this particular image serves as a reply to Erdoğan's subjectification of Elvan as the disobedient son of the state, which they replace with revolutionary martyrdom.<sup>92</sup> It is necessary to note here that although the People's Front militants are *militant-martyrs*, who consciously decide to carry out a deadly and sacrificial action, this is not the case for Berkin Elvan. As if Elvan's death was a self-fulfilling prophecy of his militancy, Elvan becomes a martyr after his death, without any pronounced decision to be a *militant-martyr*. This, however,

---

<sup>90</sup> Berkin Elvan is usually referred to by his forename rather than his surname as a sign of familiarity, kinship, and comradeship.

<sup>91</sup> Banu Bargu skilfully summarises the complex family tree of the extraparliamentary left in Turkey while tracing their common grounds which enabled all fractions to work together during the period of the death fasts. (227-236). Bargu describes the People's Front ideological strategy as 'vanguardist warfare' which carries out sensational actions against agents of imperialism, finance capitalism, state officials, torturers and drug dealers 'to display the vulnerability of existing order and [to] expose the political "truths" that are concealed from the masses by the "artificial balance"' (234).

<sup>92</sup> The book dedicated to Berkin Elvan mentions the significance of this portrayal of Berkin Elvan while criticising the 'petit bourgeoisie' for owning the legacy of Berkin Elvan on the basis of the innocence of a child and rejecting his political agency. 'They refused to show his photograph with the red face cover and throwing stones with a sling shot. Instead they publicised his childhood photographs when he was swinging or flying a kite' (Köse 2015: 9). Translation from its Turkish original belongs to me.

can be understood as a re-subjectification of Elvan against his subjectification by the *father-state*. The People's Front's re-adaptation of the image can be read as a refusal of the state's expectation of obedience that suggests Elvan was already a *militant-martyr*; already a disobedient subject, before the state's subjection of him as such. In that regard, it is counter-subjection that aims to take the power of subjection from the state to reject being a part of the stately economy of obedience and disobedience. However, this gesture of counter-subjection also contains the assimilation of the subjection that it opposes. To put it in other words, the *militant-martyr* is both a refusal and a re-appropriation of the deadly fate that is attributed to disobedient subjects by the state, as it replaces the state's subjection of the terrorist with the *militant-martyr*.

Indeed, this double movement of refusal and replacement through re-appropriation extends throughout the hostage-taking. The People's Front's action is significantly different to that of Antigone and her male counterparts which, although self-sacrificial, carries the objective of issuing violence to the other, not only to the self. The action of the People's Front aims to prosecute the ones who claim the powers of the state, who embody and perform the state and its violence. In that regard, it aims to replace state violence and its legal system, which I analyse below through their list of demands.

### ***Counter-***

The People's Front militant lists their demands while holding the prosecutor at gunpoint:

Our first demand is a live, public confession by the police officers who shot Berkin, who witnessed it and who gave orders. Our second demand is public prosecution of those police officers in a people's court at a public square by a committee of our choice. Our third demand is acquittal of all people who are on trial for seeking justice for Berkin. Our fourth demand is to exit safely with the prosecutor. Once our three demands are met, we will leave the prosecutor at a safe place. The prosecutor lives (Yılmaz and Yakşi 2017: 59).

At first the demands appear to be exaggerated, unattainable, as they push the boundaries of the existing legal and political order. They *counter* the juridical system through enacting a violent act, which counters Elvan's violent encounter. It is a spectacle of punishment that punishes the representative of the legal system, regarding Elvan's case, who failed to punish the perpetrators. In other words, it challenges and replaces the existing political and legal order.

Below I unpack this double movement through a discussion on the conceptual framework of *counter*.

Banu Bargu reads the self-destructive and self-sacrificial death fast campaign of the 2000s through the conceptual lens of *counter-conduct* ‘a *counterconduct* against dominant forms of conduct prescribed by the state, a selfless, ethical performance for the revolution, potent with symbolic and political significance’ (243). Bargu emphasises the sacrificial character of the hunger strikes while registering those acts as ‘heroic deeds based on the performance of acts of sacrifice on behalf of the working and oppressed classes’ which target official, economic or political institutions of strategic value ‘to expose political “truths” [and] to expose the “truth” of the state’ (238). The case of the hostage-taking action too can be considered an act of sacrifice on behalf of Berkin Elvan, and on behalf of the public who demands justice for Elvan. I discuss the sacrificial character of the action in the following section. However, the action targets the state juridical system which failed to bring justice to Berkin Elvan by directly targeting the prosecutor in charge of the investigation. In that regard, the hostage-taking action is not only a self-sacrificial action, as it was the case of the death fast campaign, but more so a violent act that is directed towards the prosecutor, as the representative of the state juridical system. In that regard, the action carries the aim of punishing the state for its crime, echoing the chant ‘The murderer state will be held to account’.

Banu Bargu borrows the term *counter-conduct* from Michel Foucault, who presents the term in his 1977-78 lectures, which were later published later on under the title *Security, Territory, Population* (2009). Foucault initially presents the terms *conduct* and *counter-conduct* in relation to pastorate (191-226). As the lectures progress, Foucault carries these terms to the modern state (333-361). Foucault uses the term ‘counter-conduct in the sense of struggle against the processes implemented for conducting others’ (201) while introducing the term in relation to the pastorate’s power ‘of conducting men’ (194).<sup>93</sup> Rather than the term ‘misconduct’, which for him ‘refers to the passive sense of the word, of behavior: not conducting oneself properly’, Foucault suggests *counter-conduct* to capture the active form of resistance which he favours in ‘reference to the active sense of the word “conduct”’ (201). To note, Foucault uses *conduct* and *counter-conduct* to emphasise the power of the pastorate’s

---

<sup>93</sup> Foucault initially uses the term ‘conduct’ only in relation to the pastorate power. On 1 March 1978 lecture he notes that ‘what I would like to show you is that they [revolts of conduct] are distinct from political revolts against power exercised by a form of sovereignty, and they are also distinct [from economic revolts against power] inasmuch as it maintains or guarantees exploitation’ (196). On 5 April 1978 lecture, however, he carries his analysis on ‘the pastoral art of conducting men and the counter-conducts’ to modern forms of governmentality (355-356).

operation through the governance of people's *conduct*, 'that takes as its instrument the methods that allow one to direct them (*les conduire*), and its target the way in which they conduct themselves, the way in which they behave' (194).<sup>94</sup> By *counter-conduct* then Foucault refers to 'movements of resistance' against pastoral conduct, which he reads as 'movements whose objective is a different form of conduct, that is to say: wanting to be conducted differently, by other leaders (*conducteurs*) and other shepherds, towards other objectives and forms of salvation, and through other procedures and methods' (194-5). In other words, Foucault's notion of *counter-conduct* targets existing institutional structures which design and order *conduct*; the movement of countering does not only object to such structures but also presents or enacts its alternative with an aim of replacing the *conduct*. This aspect of replacement is missing in Bargu's adaptation of the term *counter-conduct*, although it is something Foucault wrestles with throughout his lectures: 'Are we not merely dealing with the same phenomena in reverse, from the negative or reactive side?' (196). Moreover, it is possible to detect an undertone of concern regarding *counter-conduct* replacing *conduct* via adapting its operation of conducting life. Foucault ends his lectures with an insinuation on this matter, this time in relation to the modern state: 'the history of *raison d'État*, the history of the governmental *ratio*, and the history of the counter-conducts opposed to it, are inseparable from each other' (357). Although the editor's try to conclude this open-ended final remark by noting that Foucault initially had two more pages in which he explains how revolutionary movements adapt the 'government of men', it is unclear how Foucault understands their inseparability.<sup>95</sup>

On the other hand, the reciprocal relationship between what Foucault refers to as *conduct* and *counter-conduct* takes a more direct form in Frantz Fanon's dialectical reading of violence and counter-violence in the 'Concerning Violence' chapter of *The Wretched of the Earth* (2001). Fanon discusses violence and counter-violence in the context of colonial violence, as he suggests it is the coloniser, through its agents such as police and army, who initially brings 'violence into the home and into the mind of the native' (29). In a similar vein to Foucault, Fanon also points to state institutions as the origin of this dialectic, but this time

---

<sup>94</sup> Foucault elaborates on the various aspects of the word *conduct*: 'Conduct is the activity of conducting (*conduire*), of conduction (*la conduction*) if you like, but it is equally the way in which one conducts oneself (*se conduit*), lets oneself be conducted (*se laisse conduire*), is conducted (*est conduit*), and finally, in which one behaves (*se comporter*) as an effect of a form of conduct (*une conduite*) as the action of conducting or of conduction (*conduction*)' (193). In that regard, it is possible to argue that Foucault's reading of the pastorate *conduct* echoes his notion of biopower.

<sup>95</sup> The editors follow the final sentence with a note: 'Foucault leaves out here the two final pages of the manuscripts in which, defining revolutionary movements as "counter-conducts, or rather types of counter-conducts that correspond to these forms of society in which the 'government of men' has become one of the attributes of the society, if not even its essential function," he briefly examines the question of their "religious inheritance"' (357).

explicitly referring to those enacting the state's monopoly on violence. In that regard, while the former indicates the indirect, or rather structural, violence of conducting life, the latter refers to a direct use of physical violence. Fanon concludes that, 'The violence of the colonial regime and the counter-violence of the native balance each other and respond to each other in an extraordinary reciprocal homogeneity' (69).<sup>96</sup> By this, however, Fanon does not suggest that they have the same impact, as he reminds us of the dissymmetry within this reciprocal relationship: 'for machine-gunning from aeroplanes and bombardments from the fleet go far beyond in horror and magnitude any answer the natives can make' (70).

Following the discussion on the conceptual framework of countering, I register the hostage-taking event as a counter-violence which reciprocates state violence, however, while doing so, as Foucault highlights, it also aims to replace the existing structures, that is, the existing legal structures of accountability. At this point I would like to return to the demands. The first demand calls for the police officers to admit the violence in the form of a confession. The performative utterance of the confession, *I confess*, indicates an acceptance and taking ownership of the violent act. Through the act of confessing, the police officers would render their actions as something to confess, a wrongdoing. In that regard, this demand counters the state's legitimate claim to violence and its execution through the police officers by exposing its criminality. Furthermore, it transforms the subjectivity of the police officer from someone bearing the state and its powers, to a wrongdoer, a perpetrator, a criminal. In other words, the demand, even when it is not fulfilled, bears a process of counter-subjection. Similar to the process of the counter-subjection of Berkin Elvan from a disobedient son to a revolutionary martyr, which I discussed in the section above, this demand reveals the fallacies of the state's power of subjection by enacting its refusal, in other words, by demonstrating the possibility of its refusal. It is, in that regard, an act of disobedience and a display of power. What is worth noting is that the People's Front militants lift the disguise of subjection through its appropriation, in other words, through utilising the power of subjection to counter the state's performance of subjection. To put it in terms of Althusser's hailing analogy, which I discussed in Chapter 1, the demand reverses the direction of *interpellation*, this time from the hailed suspect to the police officers, who then becomes the suspect. To put it in terms of Butler's

---

<sup>96</sup> This reciprocity has a subjective aspect as well; Fanon presents a dialectical relationship between the subjectivities of the coloniser and the colonised, as he writes, 'the settler and the native are old acquaintances. In fact, the settler is right when he speaks of knowing "them" well. For it is the settler who has brought the native into existence' (28).

remarks on the Althusserian *interpellation* then, the demand calls for the police officers to align themselves with the law (Butler 1997: 107).

This brings us to the second demand, which challenges the existing legal structures of accountability by proposing an alternative that is to publicly prosecute the police officers by a committee of their own choice. This demand exposes the failings of the existing legal structures of accountability by presenting its replacement. Their demand recalls a discussion between Foucault and a Maoist on public prosecutions, or – rather, on people’s courts – that is published in the edited collection *Power/Knowledge* (1980). In that discussion, the Maoist discussant advocates the necessity to establish people’s courts rather than immediately prosecuting the counterrevolutionaries by death to ensure that the ‘particular act of vengeance is not simply a matter of an individual settling of accounts’ (3). Foucault disagrees that setting up a people’s court ‘is the natural expression of popular justice, but rather that its historical function is to ensnare it, control it and to strangle it, by re-inscribing it within institutions which are typical of a state apparatus’ (1). In other words, Foucault argues, in a similar vein to his remarks on *conduct* and *counter-conduct*, that people’s courts imitate the state juridical system, and hence, it is the ‘first deformation’ of popular justice’ (2). Surely, an alternative proposal to setting up people’s courts would necessitate its own procedural system and criminal codes, and perhaps even require establishing its own accountability process. However, I suggest that the demand does something else here, as they know it would not actually take place. The demand suggests a similar legal system to the state juridical system, with a nuance. The nuance is that it sets up an accountability process which is not carried out by the state representatives, but rather by the people. By this the demand reveals the fantasy of accountability regarding the cases of state violence. Recalling the almost tragic situation that Navaro-Yashin notes about complaining about the state to the state (167), which I mentioned in Chapter 1, the People’s Front’s demand exposes the fallacy of the processes of accountability. The state cannot sit at the same time in the seat of the perpetrator and the prosecution; I discuss this further in the final chapter. A moral argument follows from this point that if the state is the perpetrator in the cases of violence issued through state officials to the people, then the state should not be the one conducting the processes of accountability.

While the listed demands expose the fallacies of the state juridical system in holding the state to account, their action already enacts the public spectacle of punishment by holding the prosecutor hostage. Indeed, the hostage-taking event is a re-enactment of the state violence that killed Berkin Elvan, a counter-violence which challenges the state’s monopoly on violence and also exposes the links between law and violence. It reminds the public that Elvan’s death

was not the tragic fate of a disobedient child but rather it was an active killing by those who performed violence in the name of the state, and that the legal processes had been reluctant to identify the perpetrators and to bring them before the law. As a result, the hostage-taking action responds to the killing of Elvan and its unaccountability by claiming to perform something that the state juridical system failed to perform, and it does so by performing sanctioned violence. In other words, the People's Front militants appropriate the two monopolies of the state: violence and law.

To expand further on this countering movement of refusal and adaptation, I consult Judith Butler's reading of the Sophocles's tragedy *Antigone*. In *Antigone's Claim* (2000), Butler reads Antigone's act of defiance as a double movement which operates simultaneously through her appropriation of stately power; Butler writes, 'her autonomy is gained through the appropriation of the authoritative voice of the one she resists, an appropriation that has within it traces of a simultaneous refusal and assimilation of that very authority' (11). In their reading of Antigone's act of disobedience Butler suggests that Antigone appropriates the authoritative voice of Creon:

Her agency emerges precisely through her refusal to honor his command, and yet the language of this refusal assimilates the very terms of sovereignty that she refuses. He expects that his word will govern her deeds, and as she speaks back to him, countering his sovereign speech act by asserting her own sovereignty (11).

Indeed, as discussed above, the People's Front appropriation of the state monopolies of violence and law assimilates the stately sovereign power. Although the People's Front militants use the word 'to punish' rather than 'to prosecute' or 'to sentence', it is possible to recognise a similar authoritative and assertive tone to those of *stately performatives*. Moreover, differently to Antigone, it is possible to read the militants' appropriations an exaggerated imitation of state violence and its unaccountability, to the point of ridicule. There is an element of mockery of the actual powerlessness of the state which can be detected at the end of the statement. The People's Front militant concludes the video statement by noting that if their demands are not met, they will kill, or in his own words 'punish', the prosecutor and die fighting. He presents the options in a cheerful manner, as if he is a game-show host presenting the rules of the game. As he concludes:

We are addressing the President and to the Prime Minister, who is more valuable? Your murderer police, and the ones who gave the orders, or your precious prosecutor? It's yours to decide. We are giving you three hours. This is not a joke. Its 12:37 now, you have until 15:37 and if those demands are not met by that time, as the DHKC [People's Front] fighters we will punish the prosecutor with death. (Yılmaz and Yaksi 2017: 59).

This mocking undertone runs throughout the statement. To note, this mocking undertone differs from Navaro-Yashin's reading of cynicism, which I mentioned in Chapter 1. Rather than cynicism, which according to Navaro-Yashin's analysis keeps people performing everyday statecraft although they are aware of its non-existence, here mockery appears as an expression of breaking off from this power relation. In that regard, the People's Front's mockery is an active counter-performance. The hostage-taking event through the medium of live video coverage and interviews exposes the scandals of the *father-state*, its violence, its powerlessness, its incompetence, its unaccountability to the public. The mockery contains an undertone of contempt for state power, a cheerfulness in exposing its limits and its 'truth', as Bargu puts it. However, the People's Front militants counter-act at the expense of their own life. To put it in Benjaminian terms, the *drama of the tyrant* come to light as the martyrs approach their deadly fate.

### **Martyr's Promise**

In a phone interview, one of the militants, Bahtıyar Doğruyol utters the words below:<sup>97</sup>

We salute Berkin Elvan, all other Gezi martyrs [...] and their families from here. We love them, we love our martyrs. We repeatedly stated that we will seek revenge. Today is the day to retaliate, it is a part of it. May they be at peace [...] We stated that we will bring justice, we are bringing justice. The Revolutionary People's Liberation Front will bring justice. We salute our organisation, our movement and all our comrades from here. We love them. We are here for them. We are here to bring justice (Yılmaz and Yakşi 2017: 250-251).

---

<sup>97</sup> The phone interview was circulated on the day from the People's Front's online media channel, Halksesi TV. Shortly after the hostage-taking event all video footage, voice recordings and twitter feeds were erased, and all People's Front-related internet websites were shut down. However, the full transcript of this interview can be found in the booklet that is dedicated to the People's Front fighters. See Yılmaz and Yakşi 2017.

It is possible to hear the echoes of the chant, ‘The murderer state will be held to account’ in the militant’s words. If the chant verbalised a wish, that has taken the form of an oath through the cross-generational rituals of Turkey’s leftist dissent, the hostage-taking action is a manifestation of the chant, an act that is holding the state accountable. The act of holding the state to account, however, is conditioned to the militants’ deadly fate. To begin unpacking this interdependence, Jacques Derrida’s (2000) remarks on witnessing can be illuminating:

The witness marks or declares that something is or has been present to him, which is not so to the addressees to whom the witness is joined by a contract, an oath, a promise, by a pledge of sworn faith whose performativity is constitutive of the witnessing and makes it a pledge [*gage*], an engagement’ (190).

Although the quote above gives the impression of witnessing in a court setting, Derrida elaborates on witnessing, or bearing witness in more general terms through Paul Celan’s poems. What the quote above reveals when it is cross read with the words of the militant is that the militants claim the position of a witness; through their act they address to the public, declaring what is present to them that Berkin Elvan was killed by the police and the juridical process is hiding their identities, and hence the state is responsible for this killing and for its disguise. In that regard, the militants are enacting the responsibility of a witness who have taken an oath. Of course, there are issues with this metaphor, as the witness is the person who witnesses the event, who was present as it unfolds and hence the truth is present to them. This is not the case for the People’s Front militants. However, it is possible to argue that their witnessing comes from the repetition of the event, as they bear witness to history and thus become martyrs. Other than the etymological bonds between witness and martyr, what entwines the act of bringing justice for their dead?

In ‘Force of Law’, Derrida (1992a [1990]) elaborates on the possibility of justice and he interprets justice as something yet to come – ‘Justice remains, is yet, to come, *à avenir*’ (27) – but also as an urgency, as justice does not wait (26). The issue of bringing justice, however, is rather complicated for Derrida due to its entanglement with the law which I elaborate in further detail in the following chapter. Here, I suggest, the People’s Front militants were responding to this urgency, something the state juridical system failed to acknowledge as the investigation on Elvan’s killing had been ongoing for two years. As the militant Bahtiyar Doğruyol continues, it becomes apparent that the action is an attempt to make justice possible not only for Berkin Elvan but for the peoples of Turkey:

We are patriot Marxist-Leninist revolutionaries. If necessary, we are ready to die for our people's liberation. And surely, we will bring good days to our people. Together with our people, we will bring revolution. We will bring justice and establish a just country. We are saluting and sending our love to all comrades (Yılmaz and Yakşi 2017: 251).

Their promise of justice not only indicates to the failings of the state juridical system but also, as I discussed above, it uncovers the fallacy of the law's legitimising claim that it is bringing, or enforcing, justice. While doing so, however, the militant simultaneously expresses acceptance of their death. The promise communicates the demand for justice, a just future, and exposes the state's inability to provide it, while verbally registering their deadly determination. This linkage between the possibility of the future and deadly fate is what I inquire into in this section. Following the previous discussion on counter-subjection, in the discussion below I suggest this is a troubled relationship. On the one hand, it is an act of agency, however, on the other hand it is a re-appropriation, and hence re-play, of the deadly fate attributed by the state to disobedient subjects.

Dying for the future is something Fanon mentions within the context of counter-colonial violence. In *A Dying Colonialism* (1965), while differentiating between the terrorist and the *fidai*, Fanon writes:

The "terrorist," from the moment he undertakes an assignment, allows death to enter into his soul. He has a rendezvous with death. The *fidai*, on the other hand, has a rendezvous with the life of the Revolution, and with his own life. The *fidai* is not of the sacrificed (57).<sup>98</sup>

The booklet dedicated to the militants of hostage-taking action refers to the term *fedai* and describe the subjectivity of *fedai* as someone who sacrifice themselves for the future (Yılmaz and Yakşi 2017: 158). Although both, Fanon's and the People's Front's usage of the term refers to acting for the future, there is a significant difference regarding whether to register such actions

---

<sup>98</sup> Banu Bargu too differentiates acts of terror from self-sacrificial acts which she refers as 'weaponization of life'; she writes, 'While some instances of political, self-destructive violence may have their roots in personal motivations akin to those that lead to suicide, and while more assertive and offensive modalities of self-destruction, such as suicide attacks by nonstate parties directed against civilians, may fit a rigorous definition of terrorism, I think it is analytically and politically worthwhile to dissociate the weaponization of life from these conceptual apparatuses' (19). As mentioned before, the hostage-taking is not only violence inflicted on the self but also on the other which, according to Bargu's classification then may render as an act of terrorism.

as sacrifice. As mentioned above Banu Bargu reads this responsibility to act for the future as ‘consciousness of sacrifice’ (241). In that regard, sacrificing worldly joys, including your life, becomes a condition for the future, or rather for the possibility for the future. Although Fanon does not read this in terms of sacrifice, what he suggests is a transformation in which the death of the *fedai* breathes life into the possibility of the future. All these comments above indicate the transformation of the subject, counter-subjection, through which the future becomes possible. However, this transformation as it breaks off from the state’s subjection, it brings a loss, that is, the loss of life. In that regard even if, as Fanon suggests, the *fedai* lives on through the life of the revolution, this transcendental transformation of the subject is only possible through sacrificing one’s own life, which then, in a cyclical manner, gives life to the possibility of the future. To complement this, Butler too reads Antigone’s self-sacrificial act as something exceeding the mortal life: ‘She acts, she speaks, she becomes one for whom the speech act is a fatal crime, but this fatality exceeds her life and enters the discourse of intelligibility as its own promising fatality, the social form of its ‘aberrant, unprecedented future’ (82). Both Butler and Fanon point out the aspect of sacrificial acts beyond the limit of death, in their potential to construct a future. This future, as is also the case in the hostage-taking action, is enacted in the form of a threat as it aims to rupture and re-construct the existing order. In other words, the promise of justice is, at the same time, a promise of death.

Indeed, in Sophocles’s tragedy, nothing can intervene between Antigone and her deadly fate, although she is interrupted several times on her path towards death. Bonnie Honig, in *Antigone, Interrupted* (2013), offers a reading of the tragedy through these interruptions to highlight Antigone’s determination and her political agency, something, according to Honig is disregarded in the canonical readings of Antigone: ‘She [Antigone] is pointedly political not transcendently universal but she can still speak to us, centuries later, nonetheless. She laments, but she does so in a way that is also partisan, vengeful, not just mournful or humanist’ (7-8). Indeed, despite all the interruptions which could have saved Antigone, she reaches her glorious death by taking her own life inside the stone vault where she is imprisoned.<sup>99</sup> This deadly trajectory resonates with the hostage-taking action as the militants refuse any interruption.

At this point one may wonder: *Why must Antigone die?* I suggest the tragedy insinuates that there is no other option for the disobedient ones but death, not to mention its gendered

---

<sup>99</sup> First her sister Ismene tries to convince Antigone not to disobey Creon’s orders, then her fiancé, Haemon, attempts to reason with his father Creon, and comes right after her burial to save her. Finally, at the very end Creon repents and comes back to release her from the cave where she is buried alive with some amount of food, to see that Antigone has killed herself.

implications that disobedient women must kill themselves for their words to have any authority, to be taken seriously, or for men to finally to comprehend their wrongdoings. In relation to the hostage-taking action, it exposes how the People's Front militants fail to break off the deadly fate that is attributed to them by the state's subjection. As Sophocles's tragedy teaches its audience that an act of disobedience always requires its actor to sacrifice their life, sacrifice their material existence for their transcendence as a martyr, or that they should be ready to sacrifice their future for the prospect for an idealised future for others. This, I argue, is a version of the Hobbesian motto that those who disobey, and rebel are responsible for their own deaths, this time from a subjective realm. Perhaps it is possible to argue there is an expectancy of subjection, that the disobedient subject would accept its deadly fate in the expense of exposing the truth. The glorified figure of a martyr, in that regard, consolidates the association between speaking the truth and death, and even transforms the deadly fate into something desirable. In relation to the discussion above on vulnerability and the distribution of deadly fate, then, it is possible to argue that the state delivers its deadly fate in direct and indirect forms. In direct form, in which the state directly targets the disobedient ones, or in indirect form, in which the state expects the disobedient ones to deliver their own death at the expense of their act of disobedience. In reference to the discussion on subjection and guilt in Chapter 1, there is an expectation of acceptance, that is, accepting the guilt of disobeying the *father-state*. Although in both forms it is the state that causes such a distribution of deadly fate, in the latter, it appears as if the death is an outcome of the subject's own agency— whereas, I argue that it is a re-appropriation of the state's subjection of the disobedient ones.

Similar to Antigone, just before their death, the militants refuse to allow Elvan's father, Sami Elvan, to enter the room, to their stone vault, to their death chamber. The interruption takes place at the final stages of negotiations.<sup>100</sup> In what appears to be the last communication between the negotiators and the militants, Sami Elvan suggests entering the room; 'Now you are asking me to return to 16 June, you want me to go through the same grief. Look my dearest, I do not want you to get hurt. If you allow me, let me come next to you, let me come there'.<sup>101</sup> The militants refuse. This is the last time we hear from the militants, as the operation begins

---

<sup>100</sup> Despite the publication ban on the hostage-taking event, a Europe-based Kurdish broadcasting media channel, Med Nûçe TV, conducts a live phone interview as a part of their evening news coverage. In the middle of the interview, Berkin Elvan's father Sami Elvan calls the fighters from the other line. As the news presenter requests for the fighters to stay on air, suddenly anyone who watches the news report becomes a part of the negotiations. The interview can be reached from Çaycı, Korhan. 2015. 'Berkin'in Babası Eylemcilerle Canlı Yayında – Çağlayan Adliyesi – Savcı Mehmet Selim Kiraz – DHKP-C'. *YouTube video*, 19:20, 31 March. Accessed 28 September 2021. <https://www.youtube.com/watch?v=2LsW-MERJFs>

<sup>101</sup> Here Sami Elvan is referring to the day, 16 June 2013, when Berkin Elvan was shot.

soon after the phone conversation. The conversation between the father, Sami Elvan and the militant transgresses traditional kinship norms, as the militant calls him Uncle Sami and the father addresses the militants as if they are his own sons. The father Elvan already mourns their death – ‘I cannot explain the feelings I am going through right now, I am trembling’– and he begs, ‘Do not make me leave empty-handed, please. Do not return me to 16 June, to 11 March. Do not make me live those feelings again’.<sup>102</sup> This conversation reveals the repetitive element within the hostage-taking action, that the militants reveal the injustice of Elvan’s killing through appropriating the deadly fate that had found and killed him.<sup>103</sup> Father Elvan responds to this repetition and trembles for their life as Ismene, the sister of Antigone who refuses to join her in the act of burying their brother, trembles for Antigone’s life: ‘You reckless girl! I tremble for your life’ (Sophocles 1994 [1962]: 5). Similar to Ismene, Elvan the father’s attempt to interrupt their deadly fate fails.<sup>104</sup>

In his book titled *Greek Tragedy* (2011 [1939]), the Classical scholar H.D.F Kitto, who translated the Sophocles’s tragedies into English, mentions that in the literature *Antigone*, as a play, is accused of being off balance, as ‘the heroine drops out half-way through and leaves us to do our best with Creon, Haemon, and their fortunes’ (106). Kitto argues that although this may appear as a fault, it is a deliberate choice which reveals at the half-way point of the tragedy that there is not one but two main characters: ‘the last part of the *Antigone* makes no sense until we realize that there is not one central character but two’; the second is Creon (107). In a similar vein, as the militants progress towards their deadly fate, or to put it in Benjaminian terms, as the *martyr drama* comes to its end, at that point we come to realise the other main character who had been there all along, the prosecutor. In that regard, although the exchange between the militants and the father Elvan declares the end of the militants, it calls our attention to the yet unknown fate of the prosecutor Mehmet Selim Kiraz.

In *The Scandal of the Speaking Body*, Shoshana Felman (2003) considers commitment as something common between a promise and a threat: ‘if promising consists in committing oneself to do something for someone, then similarly, threatening consists in committing oneself to do something against someone’ (13). In a similar vein, when the oath of ‘the murderer state will be held to account’ transforms into a promise through the self-sacrificial commitment of

---

<sup>102</sup> Here Sami Elvan refers to the day Elvan was shot on 16 June 2013 and to the day he died, 11 March 2014.

<sup>103</sup> According to the lawyers’ notes the militants wanted to be addressed as Berkin. By doing so, they re-enacted his death; see Yılmaz and Yakşi 2017: 115-119.

<sup>104</sup> Sami Elvan’s position is reminiscent of Ismene’s position in *Antigone*. In *Mourning Sex* (1997), Peggy Phelan elaborates on the role of Ismene as she writes: ‘Ismene attempts to cut her losses and to choose life over death. But instead, she becomes absorbed in the terrible economy of death, an accelerating multiplication’ (13).

its utterers, it simultaneously it serves as a threat to the state. Felman adds right after pointing on their similarity, '[a]lthough the meaning of promise (love and marriage) is of course different from that of the threat (revenge and punishment), the force behind both is the same' (ibid.). In the case of the hostage-taking action, the meaning of promise and threat is entangled through the deed. At this point, it becomes evident that the militants' commitment to the promise of bringing justice to Berkin Elvan is materialised and enacted through a physical, bodily, sacrificial, and violent threat. As the militant utters his love to the Gezi martyrs and to his comrades, his commitment of love manifests as a threat to the prosecutor's life.

### **Martyr of Law**

Shortly after the phone conversation with Elvan the father, at around eight-twenty-two in the evening, Special Forces undertook an operation. While the militants died at the scene, the prosecutor Mehmet Selim Kiraz was rushed to hospital where he lost his life. The next day, the prosecutor was buried following a visually spectacular ceremony at the courthouse.<sup>105</sup> During the ceremony Kiraz was called a martyr, in fact, often referred to as *hukuk şehidi* which translates as 'martyr of law', and his name was given to the entire justice palace complex, where the hearings of Berkin Elvan's case had taken place.



**Figure 3:** Funeral Ceremony of Mehmet Selim Kiraz  
© Osman Orsal/Reuters<sup>106</sup>

<sup>105</sup> The prosecutor's funeral ceremony was aired live on the day from the televisions. In a short video clip by BBC News Türkçe, we hear the Minister of Justice calling that the event a terrorist attack that not only targeted the prosecutor but the justice system as a whole and the people of Turkey. He adds that the methods for demanding justice are known, all other methods are illegal and immoral. BBC News Türkçe. 2015. 'Öldürülen Savcı Mehmet Selim Kiraz için Tören - BBC TÜRKÇE '. *YouTube video*, 1:30, 1 April. Accessed 28 September 2021. <https://www.youtube.com/watch?v=11iP9tCHuUM>

<sup>106</sup> Obtained by the permission of Reuters.

The prosecutor's death transforms into a spectacle of the state and its legal system, into a stately performance of power and authority. However, despite the heroic speeches by the state official against terrorism, I argue, the ceremony actually serves the purpose of restoring the damaged all-mighty *father-state* imagery and its force of law. The renaming of the justice palace complex symbolises this reparation, as the prosecutor's name attaches to the massive building compound as if it is a good-luck charm. In relation to the discussion on martyr and witness, at the beginning of this chapter, his referral as the *martyr of law*, indicates his devotion to justice and truth. Media coverage that ensued about him and his death, suggests that he was close to solving the case of Elvan before he died, as if the truth also died with him. I read this as the state's attempt to bind the *truth* to law, in response to the People's Front claim of exposing the truths of the state and its legal system.

Furthermore, it is possible to observe the re-construction of the mythical *father-state* imaginary through the discourses of martyrdom. As such discourses of martyrdom, in a performative manner, (re)construct the omnipotent and omnipresent stately power, they gain an official recognition. Indeed, the two martyr figures, the state's martyr and the revolutionary martyr, are positioned against one another, as the contestation between the state and its *counter* continues through the ideal subjects in a transcendental, mythical realm.

At this point, the remarks of the prosecutor's family on their son's death allow us to analyse the performative re-making of the *father-state* further. After the prosecutor's death, the family, but especially the father, Hakkı Kiraz, have become the centre of attention. This is partly due to the fact that Kiraz's family portrays a perfect representation of a conservative, potentially AKP-supporter, family. However, beyond this, it is possible to observe a *father-state* constellation which is constructed around the state's discourse of martyrdom. Hakkı Kiraz, has given several interviews, and has had several public appearances with and without Erdoğan since his son's death. On every occasion, Kiraz the father expresses his acceptance of his son's martyrdom and considers it as a glorious gift from God. Even so, in a forty-five-minute interview with the father on his son and his son's death, Kiraz the father shares an anecdote about his son, suggesting that his son desired martyrdom. He considers this memory of his son as if it was a prophesy of his glorious deadly fate (Doğru Tarih 2017).<sup>107</sup> Surely, the father's words can be read as a form of endurance. However, in their public speeches, both

---

<sup>107</sup> Two years later a news agency, TGRT Haber, invites the prosecutor's father for an interview. In the interview his father describes the prosecutor as someone who always had been just, as if it was a prophecy for his martyrdom, he continues with telling anecdotes of how he had always desired martyrdom and concludes that it was his fate. Doğru Tarih. 2017. 'Sonra Ne Oldu - Şehit Saveci Selim Kiraz - 11 Şubat 2017'. *YouTube video*, 45:09, 11 February. Accessed 28 September 2021. <https://www.youtube.com/watch?v=vTY5-nJFu8&t=189s>

Hakkı Kiraz and Erdoğan stress out the prosecutor's disposability for the state's sake, almost with the exact same words.<sup>108</sup> This reveals that the *father-state* performance attributes deadly fate not only to its disobedient sons but also to his obedient sons, the only difference being the glorification of their deaths as martyrs.

This is what I read as *the drama of the tyrant*, or to put it in Turkey's context, the drama of the *father-state*. Turkey's *father-state* drama, re-performs the drama of Creon, whose decision causes the death of his own son as well. Those who act on behalf of the state are only valued by the *father-state* after their death. In that regard, the myth of the state relies on the death of everyone, its supporters and opposers alike, in order to sustain its existence and authority. As the militant-martyrs' reveal the drama of the *father-state* is then, something related to its mythical grip which distributes death to its opposers and supporters alike once it is challenged. The drama of the *father-state* is indeed its deadliness, its worldliness that it brings its own end as it distributes death also to the subjects who act on its behalf.

---

<sup>108</sup> In 2019 Erdoğan in his address to protective judges and prosecutors mentions Selim Kiraz as an ideal to follow; 'one brother Selim gets martyred, thousands of Selim follow' and adds that he was martyred because he was just (see 'Erdoğan, Hakim ve Savcılara Seslendi'. 2019. *Sözcü*, 22 May. Accessed 28 September 2021. <https://www.sozcu.com.tr/2019/gundem/erdogan-hakim-ve-savci-kura-toreninde-4892646/> ) In a similar vein, in 2021 commemorations of Mehmet Selim Kiraz's death, his father echoes Erdoğan's words; 'one Mehmet Selim dies, thousands are born. Had we had thousands of lives, let all be sacrificed for the state, for this nation, for this nation-state' (see 'Savcı Mehmet Selim Kiraz'ın şehadetinin 6.yılı! Baba Hakkı Kiraz: Bir Tane Mehmet Selim Gider Bin Tane Mehmet Selim Doğar!'. 2021. *A Haber*, 31 March. Accessed 28 September 2021. <https://www.ahaber.com.tr/ozel-haberler/2021/03/31/savci-mehmet-selim-kirazin-sehadetinin-6yili-baba-hakki-kiraz-bir-tane-mehmet-selim-gider-bin-tane-mehmet-selim-dogar-savci-mehmet-selim-kiraz-kimdir> )

## Chapter 4: State Violence on Trial

In June 2013, right after Berkin Elvan was hit by a tear gas canister, the Elvan family filed a criminal complaint against the police with the accusation of direct intention to kill.<sup>109</sup> In March 2014 Elvan died after being in coma for a year; one year later, in 2015, the People's Front took hostage the fifth prosecutor in charge of Berkin Elvan's case. After a criminal investigation lasting for three years, under six different prosecutors, in December 2016 the indictment was finalised which brought probable intent to kill charges against one police officer, Fatih Dalgali (Berkin Elvan Indictment 2016).<sup>110</sup> Following this, the first court hearing took place in June 2017 and the final hearing was held in June 2021.<sup>111</sup> Throughout the trial process, officer Dalgali had carried out his duty as a police officer in the eastern province of Van, while holding the right to bear arms. In the final hearing, Fatih Dalgali was found guilty on the charge of probable intent to kill and was sentenced to sixteen years and eight months in prison. Despite the verdict, however, the court did not order the officer Dalgali's arrest, and he still continues his duty as a police officer. His conviction could be overturned by the High Court. The Elvan family lawyers interpret the court's conflicting verdict of sentencing him to prison but not ordering for his arrest, as the court's expectation, or even prediction, that the decision will be overturned. I discuss the meanings behind the court's verdict further in this chapter; however, it is necessary to note here that this is yet another example of the court's reluctance to prosecute, and sentence, the ones responsible for Elvan's killing.

In addition to the criminal complaint against the police officers, the Elvan family also filed a criminal complaint against the then Prime Minister, Minister of the Interior, Istanbul Governor and Istanbul Chief of Police, on the grounds of their criminal liability arising from giving orders for the violent suppression of the Gezi protests, and their lack of cooperation in identifying the suspect after the incident. Their complaint resulted in a criminal investigation against the Governor and Istanbul Chief of Police, which was later dropped in 2014. As a result,

---

<sup>109</sup> At the time, the prosecutor opened an investigation with charges of excessive use of force, that describes in the Turkish Penal Code as 'Any public officer, having the authority to use force, who uses an amount of force in the course of his duty which exceeds that required by such duty, shall be subject to the provisions relating to intentional injury' (TPC 256(1)).

<sup>110</sup> Probable intent to kill is a reduced homicide charge in comparison to direct intention to kill. According to the Turkish Penal Code, criminal charges including homicide are classified according to two categories of intent (TPC 21) and recklessness (TPC 22). Intent is also considered in terms of direct intent and probable intent. For homicide charges the sentence for the former is aggravated life sentence (TPC 82) and for the latter it is life sentence, which may be subject to further deductions in the penalty (TPC 22/2).

<sup>111</sup> The Berkin Elvan trials are observed by many national and international human rights organisations. The most detailed account of the hearings can be found at Faili Belli (Perpetrator Unknown) a project which provides detailed reports on the hearings of Turkey's state violence trials including the Elvan trial. In this chapter, I take their reports on Elvan trial hearings as the main resource. See; 'Berkin Elvan Davası' n.d. *Faili Belli* <https://www.failibelli.org/dava/berkin-elvan-davasi/>

in 2015 the family appealed to the Constitutional Court which was concluded in 2019 (The Constitutional Court Application 2019). In 2019, the Constitutional Court refused their application by concluding that criminal liability for the high public officers was not established, as the applicant –the Elvan family– had failed to provide evidence that proved a direct relationship between the police officers’ actions and orders given by high public officers. In reference to the act on Prosecution of Public Servants and Other Public Officers (Law no: 4483), the Court notes that complaints against the public officers cannot be on general grounds.<sup>112</sup> The Constitutional Court’s refusal singles out the incident and dismisses the organised and systematic nature of the police violence during the Gezi protests. Furthermore, it does so by pointing to the possibility of accountability, i.e., that it would have been possible had there been enough evidence. The rejection does not say *no*, but *not now*. Following this, the Constitutional Court rejected yet another application by the Elvan family, this time regarding the criminal liability of the other police officers who were present at the scene, by stating that ‘one police officer is already on trial’ (Constitutional Court Application 2020). This time, the Constitutional Court tells the family to wait. The Constitutional Court’s decisions remove Elvan’s killing from its historical context, and reduce it to the possible wrongdoing of one bad cop. The legal conventions on accountability fail to *see*, or turn a blind eye to, the systematic and organised nature of the police violence, and hence fail to *see* the state and its violence.

Shoshana Felman (2002), in *The Juridical Unconscious*, notes that ‘[l]aw itself is [...] both redemptive and oppressive; and so is in potential every trial. Every trial can be both at the same time, or it can be rather the one or the other’ (17). Regarding the Elvan case, as is often the case in state violence trials, the possibility of redemption manifests in the form of accountability, which translates into justice, a sense of closure. However, as I disclose in this chapter, what we witness rather in the Elvan trial is an interplay between those two potentials, redemption and oppression, which also illustrate the family’s association with the law through the court case. Furthermore, the interplay between the two possibilities, namely redemption and oppression, keeps the Elvan family in suspense, waiting for accountability, which I examine in this chapter as a form of legal violence in itself.

Legal violence is often considered in terms of its force, a force with *mystical* foundations, as Derrida (1992a [1990]) refers to it in ‘Force of Law’. In the context of a trial,

---

<sup>112</sup> Article 4 of the Act states that complaints against public servants and other officers cannot be on general grounds, that the complaints must specify a person and event, claims must rely on serious evidence, and the complaint document must include the complainant’s full name, contact details and signature (Law no: 4483).

as Robert Cover (1986) in his famous essay ‘Violence and the Word’ exposes, this force operates through the medium of legal interpretation. As Cover explains:

Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur (1601).

Cover’s analysis not only exposes how the violence of legal interpretation is at the heart of juridical operation, but also, more importantly, points to a continuity of violence. This continuity can be understood within the context of the repetitiveness of legal conventions, something specific to the legal field; as Cover brings to light in the quote above, it announces a future violence by repeating the former. Cover’s emphasis on the violence of legal interpretation also allows us to consider the force of law as a performative thing, which is established through a repetition of legal interpretation. It is this repetitive, almost ritualistic, utterance and performance of legal interpretation that solidifies law and legal convention.

Furthermore, I suggest, the continuity of violence that Cover exposes, can also be considered in terms of its connections to other forms of violence, such as police violence. As I present a reading in this chapter, the Elvan trial displays the continuity of violence while making the transformation between police violence and legal violence intelligible. To clarify my position here, by suggesting an association between the police violence that is inflicted upon Berkin Elvan and the legal violence that manifests during the legal processes of accountability, I do not imply the existence of a conspiring, evil, omnipotent omnipresent state with a capital ‘S’. On the contrary, I argue that the legal aftermath of Elvan’s death, exposes the ordinariness of violence that is infused within the everyday operation of state institutions.

Following Cover, Austin Sarat (2001) notes that ‘[l]aw without violence is unthinkable [...] Law depends on violence and uses it as a counterpunch to the allegedly more lethal and destructive violence situated just beyond law’s boundaries’ (3) and concludes that ‘law sits poised between the present reality of violence and the promise of a justice not yet realised’ (8). Regarding the case of Berkin Elvan what Sarat refers to as the more lethal violence beyond law can be understood as the deadly state violence which manifested in the form of police violence. According to Sarat’s argument above, this violence should be countered by legal violence to bring justice. In other words, following Sarat’s argument, it is possible to consider legal processes of accountability as forms of legal counter-violence, which can be considered in

relation to Felman's note on law's redemptive potential, as well as the People's Front's counter-violence. However, what I find striking in Sarat's quote is that, although this may not be his intention, law appears as an interval between violence and justice, a waiting apparatus that promises justice that is 'not yet realised'. Sarat's unintentional exposure presents a lens to analyse the prolonged legal process of the Elvan case as an endless interval which holds the Elvan family in anticipation of justice. Indeed, law's promise of justice is a troubled one, as it always comes by violence. Below, I begin by inquiring into this promise to comprehend how law's promise of justice rather delivers violence, which provides the conceptual framework for the rest of the chapter. Then I turn my focus to the Elvan court case, starting from the indictment and then to the trial proceedings, I observe a constant *unseeing* of the violence, and of the perpetrator. Although this appears as a collective effort, something I read through Felman's (2002) notion of *juridical blindness*, it takes different forms, such as distortion, disguise, and silence. Despite the trial's blindness towards recognising the violence, the Elvan family continues to seek justice, and accountability, through legal means. As the time passes, the Elvan family gets more and more entangled with the law, which becomes a force, a performance that re-constructs their subjectivity, while they are kept waiting before the law in anticipation of justice. In the final section, I unpack the Elvan family's waiting with Frantz Kafka's famous parable 'Before the Law' to expose the mechanism of waiting, or rather to be waited for, as a form of legal violence.

### **Law's Promise**

The father, Sami Elvan, addresses the court at the first hearing: 'Is there justice? I have been seeking answer [to that question] for four years. I want all state officials to be prosecuted, from the lowest to the highest ranked' (Kural 2017). The Elvan family repeats this demand on every occasion. They wish to put the state and its violence on trial, to hold the state accountable. To do so, unlike the People's Front's extra-legal action, the Elvan family consults legal means. In addition to the main trial in which one police officer, Fatih Dalgali, was prosecuted, the family appeals to other, higher, legal authorities, to bring charges to other state officials for giving the orders, and to other police officers who were present at the time of the event as accomplices. Before discussing the legal procedures, however, something catches my attention in Sami Elvan's words above, as he puts it, he is not only seeking justice for his son but through that search, he is seeking to discover whether there is such a thing as justice. In this section, I do not intend to inquire into this eternal question, but rather, I inquire into the relationship between

the law and justice to understand the dialectic between the family's anticipation of justice and its legal manifestation.

While tracing what justice meant for Benjamin through his works and his life, Shoshana Felman (2002) notes, 'Benjamin seldom uses the word "justice," yet it is justice that is the point of departure for his critique' (10). In the context of a trial, Felman likens Benjamin's understanding of justice to Judgement Day:

'Judgement Day': the day on which historical injustice will be cancelled out precisely through the act of judgement; the day on which justice and memory will coincide (perhaps the day on which the court will be redeemed from its inherent political *forgetfulness*) [...] Judgement Day implies a necessary reference to history and of historical justice to a reawakening of the dead (14-15).

As other scholars also point out (see Martel 2012, Derrida 1992a [1990]) Benjamin's understanding of justice is Messianic, which suggests bringing justice *to* the dead, not *for* the dead, through their reawakening. In reference to the discussion on Benjamin's notions of divine and mythical violence, which I discuss in Chapter 1, one can argue that the legal system is the mythical imitation of the divine. Thus, although trials imitate the final trial, Judgement Day, worldly trials do not have the divine power to bring justice to the dead by their reawakening. If this is so, we may as well conclude our investigation here as justice in this world is impossible. However, the Elvan family, like many others who are subjected to state violence, carry on with their search with substantial demands and expectations from the law. Surely this situation indicates a dilemma, which, one can suggest, Derrida also finds himself in while elaborating on justice. In 'Force of Law', Derrida first echoes a Benjaminian limitation on justice, stating that justice can neither be reduced to the calculations of law and legal systems, nor to the calculations of the stately economy of punishment: 'Justice exceeds calculations, rules, programs, anticipations and so forth' (28). However, law's possessive claim on justice presents a dilemma to the ones seeking justice: 'incalculable justice *requires* us to calculate' due to the urgency it bears (ibid.). As mentioned in the previous chapter, justice needs to be delivered, it bears an urgency; when it is needed, it needs to come right away. Justice does not wait (26). Derrida's elaboration on justice reveals a conundrum for those who seek justice after state violence, that in order to seek justice it must be translated into legal language, it must be transferred, and hence reduced, to the calculations of legal conventions and procedures; to hold the ones accountable...to account the violence...to count.... How many police officers does it

take to prosecute the state? How long of a prison sentence is enough to bring justice to Berkin Elvan? The notion of accountability has a significant entanglement with the dilemma of (in)calculability of justice. Derrida too finds himself torn by this dilemma. After addressing its impossibility, nonetheless, he suggests, ‘one must always say perhaps for justice’, and concludes that although justice is something beyond legal calculations, we should not stop searching for it through legal means: ‘That justice exceeds law and calculation, that the unrepresentable exceeds the determinable cannot and should not serve as an alibi for staying out of juridico-political battles’ (28). However, James Martel (2012) criticises Derrida’s position on justice:

For Derrida, we should rather hold to the immanence of justice, to its status as always being “perhaps” and “to-come”. In this way justice remains transcendent, able to “haunt” and trouble our practices rather than being hijacked for the purposes of retroactively justifying them (75).

As I disclose further in this chapter, justice as a transcendental possibility does indeed haunt the Elvan family’s search for justice and hold them in an eternal state of waiting. In a Derridean vein, the Elvan family too ‘say perhaps for justice’ and, in return, find themselves in an exhausting, never-ending legal battle which I present further throughout this chapter. Justice transforms into a substantial demand of accountability that is something intelligible in legal terms. By accountability, the family means prosecution of all state officials, from those who gave orders to those who performed and collaborated. Thus, the family reduces justice to legal accountability. It would be wrong to accuse the family of being naïve, for not knowing that they can never get true, historical, justice as Benjamin calls it. Rather, it is possible to read this reduction in terms of the urgency of justice and the responsibility of the living towards the dead. Felman notes in reference to Benjamin that ‘[h]istory is [...] above and beyond official narratives, a haunting claim the dead have on the living, whose responsibility it is not to remember but to protect the dead from being *misappropriated*’ (15). Following Felman’s remarks, as I discuss further in this chapter, the Elvan family’s legal battle is also a battle against Berkin Elvan’s misappropriation as the disobedient son who is responsible for his own death, which translates to the legal language in terms of Elvan’s culpability. Furthermore, I suggest that the Elvan family’s persistence allows us to register the trials’ potential in recognising state violence during the Gezi protests, which manifested in the form of police violence. It has the potential to acknowledge, and to accept, the historical injustice, even if it

cannot undo the past. In that regard, each state violence trial bears the potential to rupture the vicious cycle between state violence and its unaccountability. At each state violence trial, courts have the historic opportunity to address, and refuse, their ‘inherent political *forgetfulness*’ (14-15). This is how I understand the Elvan family’s persistent engagement with the law, their anticipation of justice and the significant demand for legal accountability.

However, so far it appears that the Elvan trial court is dismissive towards this historic opportunity and prefers to enact a repetition of unaccountability. *So far*, since, although the main criminal case has ended, its paradoxical ending suggests that the Elvan case is far from being concluded and that it will be ongoing at the national and international level...ongoing without any prospect of its ending. Drucilla Cornell (1990) in reference to Derrida’s ‘Force of Law’,<sup>113</sup> notes that ‘the law just keeps coming’ as she likens it to a childhood ghost story in which the ghost, in other words the law, ‘draws closer to its victims’ (1051).<sup>114</sup> Cornell makes this analogy in relation to the violence of criminal sanctions, however; I suggest her observations also relate to the Elvan family’s juridical battle for justice. The more they demand justice, the more they are entangled with the law. Law keeps coming onto the subject with a promise to bring justice, to hold the responsible to account; in return it binds the subject onto itself with the anticipation of this promise. The more the Elvan family seeks justice, the more the law keeps coming, forcing itself onto the subjects. The victims of state violence transform into victims of the law who are caught within the endless spiral of legal procedures, which I analyse further in this chapter under the framework of *waiting*. To return to the law’s promise, however, it promises justice, and accountability; but the law does not guarantee their deliverance. What we rather witness regarding the Elvan case is a performance of its failure. This failure, Judith Butler (1990a) suggests in their commentary on Derrida’s ‘Force of Law’, is what keeps law operative:

This transvaluation of values establishes the law (as the Good or as the force of law) as perpetually ‘outside’ existing law, but loses sight of the operation by which that ‘outside’ is established. This ‘outside’ and /or ‘future’ can be maintained only through a repetition of the performative, a repetition that in its perpetual necessity reveals itself as a failure,

---

<sup>113</sup> Derrida’s ‘Force of Law’ first published in *Cardozo Law Review* in a special issue which also contained series of commentaries and reviews by other scholars including. Drucilla Cornell.

<sup>114</sup> Cornell’s comment is a response to Stanley Fish who according to Cornell, insist on identifying law with justice (1050). ‘The law is on the first step. The philosopher desperately tries to check the law – but to no avail - by appealing to “outside” norms of justice. The law is on the second step. Now the feminist critic tries to dismantle the law machine which is operating against her. Again, the law simply discards the criticism of its masquerade and here, heterosexual bias, as irreverent. The law is on the third step. It draws closer to its victims’ (1051)

the constitutive and repeated failure that the law ‘is,’ a failure that generates the law as a generative repetition (1718).

Butler’s comments above reveal that the law’s foundational promise of justice is, conditioned to the repetitive performance of its failure. To put it in Derridean terms, what makes the subjects to ‘always *say perhaps* for justice’ and seek it through legal means is its repetitive failure, which bears the potential of its success, one day. In a similar vein, what we witness at the Elvan case is the repetition of failure, which manifests in the form of repetition of unaccountability. As I disclose in the following section through an analysis of the indictment, the repetition of failure is performed through the self-referential legal process. Drucilla Cornell refers to this as ‘self-conserving repetition’, to emphasise the constituting function of this repetition, through which law consolidates itself as a self-standing system, ‘its own “positive” social reality in which the status of its own myth cannot be challenged (1056-1057). Both Cornell and Butler understand legal repetition as something fundamental to the repetitive (re)construction of law and hence to its operation. Different to Butler, Cornell emphasises the aspect of violence rather than the aspect of failure, which coincide in the cases of legal (un)accountability, as the repetition of (legal) violence takes the form of failure to hold to account. In other words, although what is being performed is a failure, in a performative manner, through performing a repetition of self-referential legal conventions, the process nonetheless contributes to re-constructing the mythical force of the law. Thus, at state violence trials, each failure consolidates the force of law and its promise of justice, whilst delivering violence through its unaccountability.

While disclosing the law’s *self-conserving repetition*, Cornell references a passage in Derrida’s ‘Force of Law’, in which Derrida elaborates on the violence of legal interpretation, and its repetition, in reference to Benjamin’s ‘Critique of Violence’:<sup>115</sup>

For beyond Benjamin’s explicit purpose, I shall propose the interpretation according to which the very violence of the foundation or position of law (*Rechtsetzende Gewalt*) must envelop the violence of conservation (*Rechtserhaltende Gewalt*) and cannot break it. It belongs to the structure of fundamental violence that it calls for the repetition of

---

<sup>115</sup> Cornell references to the 1990 edition of Derrida’s *Force of Law*. The quote is unchanged in its 1992 edition which I use in this thesis.

itself and founds what ought to be conserved, conservable, promised to heritage and tradition, to be shared. A foundation is a promise (Derrida 1992a [1990] :38).

What Derrida refers above by the ‘violence of conservation’ (*Rechtserhaltende Gewalt*) is Benjamin’s notion of law-preserving violence. To recall, *law-preserving* violence is ‘the use of violence as a means for legal ends. For the subordination of citizens to laws’ (Benjamin 2007 [1978]: 284). Derrida’s comment on legal violence reminds us of its origins; as Benjamin puts it, ‘violence crowned by fate, is the origin of law’ (286). It is this violence, that is crowned by fate, that establishes the legal system and hence, that is sustained by its repetition in the form of *law-preserving* violence. ‘Justice is what is promised by law; its possibility is what keeps us obedient, patient and hopeful’ (Martel 2012: 71). Justice is what is expected from a trial as this is the main, if not the only, motivation for appealing to the law. Furthermore, justice, or rather its promise, is what justifies law and its violence. Benjamin (2007 [1978]) notes this relationship at the beginning of his ‘Critique of Violence’: ‘If justice is the criterion of ends, legality is that of means’ (278). However, regarding positive law, justice as an end quickly transforms into justified means, as Benjamin observes: ‘positive law [...] “guarantee[s]” the justness of the ends through the justification of the means’ (ibid.). In other words, the law becomes the means for its own ends and operates through preserving and repeating the violence which establishes the legal system. In legal systems, then, what is considered as justice is the just procedure. The correct performance of the legal repetition itself replaces justice with the claim of delivering justice through just means. However, prioritising correctness of legal conventions and procedures, as I argue, only guarantees the legal repetition of the foundational violence. Thus, when state violence is on trial, what we witness, rather, is a repetition of failure. It is a failure, that is, the failure to hold the state and its violence accountable, which is a re-performance of its foundational violence in legal form. In that regard, the law’s promise of justice is actually law’s promise of violence, which only suggests a possibility of justice but always guarantees violence.

The conceptual discussion above on the law’s promise presents a framework to demystify the violent repetition of unaccountability in the Elvan case. I suggest that the failure of the Elvan trial is related to the legal operation itself as it prioritises its own self-conserving repetition which carries, and repeats, its foundational violence. As the legal process reduces justice to just procedures, it keeps repeating its foundational violence rather than delivering the promise of justice. Hence, it is possible to suggest, law and legal conventions turn a blind eye to state violence, or that state violence is law’s blind spot.

In the *Juridical Unconscious*, Shoshana Felman (2002) suggests that trials, especially criminal trials, constitute a certain *blindness* due to their operating structure, which she observes in relation to trauma.<sup>116</sup> Felman's notion of *juridical blindness* stands for law's inability to recognise the historical importance of the case before them: 'law cannot and does not see that a juridical case becomes a legal trauma in its own right and is therefore bound to repeat itself through a traumatic legal repetition' (57). Surely, it is possible to address the problems within the Elvan trial from law's inability to register the family's trauma of losing Berkin Elvan and consider each hearing as a repetition of this trauma.<sup>117</sup> Furthermore, this trauma is not only a personal one, but is a publicly shared trauma that passes on generations to generations and is voiced by the chant 'The murderer state will be hold to account'. Deadly state violence and its unaccountability is a collective trauma, a cultural wound in Turkey, to which the trial turns a blind eye. 'Legal memory is constituted, in effect, not just by the "chain of law" and by the conscious repetition of precedents but also by a forgotten chain of cultural wounds and by compulsive or unconscious legal repetitions of traumatic, wounding legal cases' (ibid.). Thus, in the Elvan case, there is an aspect of trauma, in terms of its legal repetition. However, rather than elaborating on the aspect of trauma, which is beyond the limits of my inquiry here, I borrow Felman's notion of *juridical blindness* to refer to the discussion above on the legal repetition of (state) violence through performing its failure, which I summarise as law's blindness towards acknowledging, and registering, state violence. In that regard, I understand *juridical blindness* towards state violence in relation to the law's self-conserving repetition. As I disclose in the following sections, what I observe through the Elvan case is that legal conventions prioritise their own repetition to be just, to conduct a just trial. This, I argue, not only reduces justice to legal procedures but also, either consciously or unconsciously, results in a legal mechanism that disguises state violence, and hence repeats the violence in legal form. In the following sections I unpack the mechanism of juridical blindness through presenting a detailed reading of the Elvan court case to expose its repetition of violence. To do so, I begin with the indictment to trace what is possible to see at the trial in the first place, in other words, what appeared, and what is left out from appearing, before the law.

---

<sup>116</sup> Felman first publishes an article on the matter in 1997. The book *Juridical Unconscious* appears to be a detailed version of the arguments presented in the article (see Felman 1997).

<sup>117</sup> Especially when it is considered that the hearings are taking place at the courthouse which bears the name of the killed prosecutor Selim Kiraz.

## The Indictment

Cornelia Vismann (2008) in her detailed study on the medium of files and their function within law notes that ‘the file contains its own progression [...] That is, they [files] allow access to that which came before the law’ (8). Following Vismann’s remarks, in this section I present an analysis of the Berkin Elvan indictment to disclose what came before the law. The significance, and the work, of the Berkin Elvan indictment is not limited to the charges it brings against the perpetrator but rather it allows us to trace the legal reasoning and its process that leads up to these charges, which, I suggest, expose the beginnings of *juridical blindness* in registering state violence. Generally speaking, indictments are curious legal documents which transform all types of objects into evidence, utterances into testimonies; in other words, they render life, everyday objects and speech into objects of law. As a result, the legal profession, and scholarship alike, treat indictments as records which guarantee ‘the live transfer of an event’ (ibid.). Furthermore, indictments translate a life event into a court case, and to a punishable offence by providing a legal narrative to the courts. Although indictments claim to speak of facts, in other words a true transfer of the event based on evidence, they (re)narrate life and the event, according to the legal conventions. From the perspective of legal conventions, by which I refer to the cumulation of laws, procedures as well as legal culture, indictments tell a story, that is, the story of what happened from a legal perspective. Legal narration, however, consciously or unconsciously highlights some parts and dismisses others while translating life into law. The indictment translates the legal interpretation of Elvan’s death, which actually begins when Elvan encounters the police through his subjection as a disobedient subject, into a legal narrative. Thus, although the legal interpretation begins before the indictment, Elvan’s subjection gains a legal seal, a claim of truth, through the indictment. In that regard, it is possible to note the crucial role that the indictment plays, as the medium that transforms police violence into legal violence. As I disclose in this section through the Elvan indictment, the legal violence begins to materialise with the indictment’s re-narration of his encounter with the police. Below, I present an analysis of the Berkin Elvan’s indictment to disclose how the law interprets Elvan and his killing, and to trace what is left out from the records, what is overlooked and disappeared prior to appearing before the law.

The Berkin Elvan indictment begins with setting the scene, first by listing the names and identity information of the involved parties as if introducing the characters of a play, a tragedy perhaps. Listing of the names, and the roles they play within the court case, is followed by noting the date and the place of the event which leads to the accusation. The indictment lists the legal provisions upon which the accusation is based; in doing so it reminds the reader of its

self-referential coercive force. The indictment refers to the articles of the Penal Code (art 82/1(e), 21/2, 53/1, 54/1)<sup>118</sup> through which it brings the charge of probable intent to kill against the police officer Fatih Dalgalı. To briefly examine the articles referenced in the indictment, Article 82/1 lists the conditions according to which the offender of the intentional killing should be sentenced to aggravated life imprisonment. The condition to which the indictment specifically refers is, ‘against a child or against somebody who cannot protect himself physically or mentally’ (Penal Code of Turkey 2016; 31). Article 21 describes intent, and section 2 reduces aggravated life imprisonment to life imprisonment in relation to probable intent charges: ‘There is probable intent when the individual conducts an act while foreseeing that the elements in the legal definition of an offence may occur. Accordingly, for offences that require a penalty of aggravated life imprisonment, life imprisonment shall be imposed [...]’ (ibid. 8). Article 53/1 lists deprivation of exercising certain rights when sentenced to imprisonment (ibid. 18) and Article 54/4 indicates confiscation of any property ‘which has constituted an offence’ (ibid. 19). To sum up, according to the listed legal references, the indictment recognises Berkin Elvan as a child who was vulnerable at the time of the event and acknowledges that Fatih Dalgalı could have foreseen the consequences of his action. However, what is not possible to trace from the referenced articles is state violence, or to put it in other words, the fact that Fatih Dalgalı was, and still is, a police officer who issued violence on behalf of the state. From the referenced articles it appears as if Elvan died as a result of a foreseeable accident, a tragedy, while disregarding the fact that Officer Dalgalı was on a duty at the time to suppress the Gezi protests according to the orders of his superiors. As such, the weapons subjected to the event, the tear gas pistol and canisters, were not his private property but rather were provided to him by the state to perform violence on behalf of the state.

The indictment continues by listing the evidence, which consists of objects, witness testimonies, CCTV footage and various expert reports. Based on the evidence, the indictment presents the legal narrative of the event which results in the charges above. The legal narrative begins by telling the story of Elvan’s killing from the legal perspective, which reveals something interesting. According to the indictment, what triggered the prosecutor’s investigation was not Elvan’s deadly injury but rather the four firecrackers which were allegedly found in Elvan’s pockets when he was taken to the hospital. The indictment notes that the investigation began when these firecrackers were secured at the Juvenile Police

---

<sup>118</sup> In this chapter, I use the Council of Europe’s English translation of the Turkish Penal Code (see Penal Code of Turkey. 2016).

Headquarters (2). It is necessary to reiterate the significance of firecrackers, marbles and slingshots in accusing Berkin Elvan of his own death, as they are items associated with non-peaceful protests in Turkey's politico-legal context. It is worth noting how everyday childhood objects translate as weapons of terrorism in the legal context, and how they become evidence of Elvan's subjection as a disobedient child, if not a terrorist. Furthermore, when these childhood objects are registered as weapons of terrorism they serve as evidence against his vulnerability as a child. In other words, the legal interpretation of childhood objects strip Elvan of his childhood.<sup>119</sup> The indictment exposes that initially Elvan stood before the law as a suspect, as a legal extension of the police's hailing of Elvan as a suspect, which I discuss in Chapter 1. What is more striking is that the indictment advances by elaborating on this finding and its significance, as if the firecrackers are the main evidence of this case, as if the case is about an offence carried out by Elvan and his firecrackers. It writes that the firecrackers were tied in packs of threes and fours to cause a small-scaled bomb effect (ibid.). The indictment is projecting the image of a non-peaceful protestor onto Berkin Elvan. By doing so, Erdoğan's political subjection of Elvan as the disobedient son of the *father-state* receives a legal seal. Even though at the end the indictment concludes, 'although the deceased was among the protesting group, there is not any evidence on his usage of the slingshot, marbles and firecrackers at the time of the event' (12), it nonetheless highlights this matter and shifts the focus of the case away from police violence, while establishing two *facts* regarding Elvan: first, that he was among the protestors and secondly, that he had firecrackers, marbles and a slingshot on him.

This information, what may appear as a detail in the indictment's fact-finding mission, however, re-narrates Elvan's encounter with the police. Indeed, the issue of firecrackers continues to be at the centre throughout the court case. The court hearings, too, begin with the witness testimonies from the hospital personnel who filed the report on finding the

---

<sup>119</sup> Turkey's legal system has a history of stripping children from the protection of their childhood status to punish them with harsher sentences. The most well-known example is Erdal Eren, who was seventeen years old when sentenced to capital punishment by the 1980 coup regime. Furthermore, between the years of 2006 and 2010 children were prosecuted as adults due to amendments made in Counter-terror law (no. 5532) and Penal Code (no.5237). The amendments allowed children above the age of fifteen to be prosecuted in high criminal courts like adults and prohibited punishments to be converted into other forms. The issue commonly referred as *taş atan çocuklar* which translates to 'children throwing stones' targeted Kurdish children on the basis of their participation in demonstrations. Within this period children, who were accused with counter-terror charges, faced long pre-trial detention, and those convicted received long term prison sentences. For more on this issue see Justice for Children Initiative's 2009 shadow report to UN Committee on the Rights of the Child: 'Children are not Terrorists' 2009. *Justice for Children Initiative in Turkey*. April. Accessed 28 September 2021. <http://ihop.org.tr/wp-content/uploads/2009/08/opaceng.pdf>

firecrackers.<sup>120</sup> The indictment re-narrates Elvan's deadly encounter with the police while skipping the actual moment of the encounter. It presents the event starting from its aftermath, based on a filed report on firecrackers. I relate the indictments' selective timeline to the self-referential character of the law as the indictment builds its story on previous legal document(s), that is, the report on firecrackers, on which Elvan appears as a suspect. The indictment demonstrates to us that the *juridical blindness* towards state violence operates through its self-referential structure, which presents the events based on a selective, and partial, consideration of evidence. Although the indictment consists of witness testimonies which present an account of the systematic and organised police violence during the Gezi protests, the indictment does not elaborate further on this finding, which is surely more crucial to the case than the firecrackers. Despite being included in the indictment, the witness testimonies are dismissed as hearsay. To present briefly the content of the testimonies, first of all it is necessary to highlight that the majority of the witnesses are locals of Okmeydanı and some were present at the scene as protestors; in other words, they too are disobedient sons of the *father-state*. Some appears to know Elvan personally due to the close-knit social relations of the neighbourhood. According to the testimonies, by the time of the event, there were only 5-6 protestors left at the scene who chanted slogans whilst sheltering at the intersection of two roads (4-7). This is where Elvan attempted to cross the main road. The police were situated on the main road approximately 100-200 meters away from the protestors and some officers were firing tear gas at the protestors from a close distance of approximately 20-35 metres. A number of witnesses cite their dialogue with Berkin Elvan, according to which Elvan said he was on his way to buy bread. Some witnessing protestors note that they had warned Elvan, that the police were 'aiming to shoot', in other words, firing gas canisters like bullets with aim at the protestors. The witness testimonies explain the moment of the incident in which Elvan was hit in the head as soon as he attempted to cross the street. They recall the aftermath, when the police kept firing teargas canisters after Elvan collapsed, which made it harder for them to seek help. The indictment, however, does not investigate the organised and systematic nature of the police violence that caused Berkin Elvan's deadly injury. On the contrary, it legitimises the presence of police violence by suggesting that the police were deployed to the area due to violent protests and looting (11-12).

---

<sup>120</sup> It appears that the number of firecrackers written on the report had been changed multiple times. When the Elvan family lawyer questions the hospital police, he responds that he saw eleven firecrackers, but he was not the one filing the report.

In ‘Critique of Violence’, Benjamin explains that police violence occurs ‘for security reasons’ when the state is threatened, when it can no longer attain its goals through the legal system (287). The indictment demonstrates to us that in a cyclical fashion, police violence itself serves as evidence for the existence of such a threat. Despite the evidence – provided by the eyewitnesses and CCTV footage analysis reports – which suggests otherwise,<sup>121</sup> the presence of the police, and their violence, serves as an affirming evidence that the protestors were, indeed, a security threat. At this point, the indictment revokes a stately fantasy, something recalling the phantasmatic enemy assemblages of Erdoğan, and paints a picture of heavy clashes between the police and the protestors at the time of the event. Blurring the line between fact and fiction, the indictment presents a distorted version of history in a bundle of so-called facts, which erases the systematic police violence and instead fabricates a sovereign fantasy in the form of violent protestors. In addition to the fantasies of a threat which re-narrates Elvan’s encounter with the police officer, the forensics report on Elvan’s cause of death, provides an inconclusive finding, which states that Elvan’s fatal head injury might as well be caused by a tear gas canister or by a rubber bullet when aimed directly, but also could be caused by him hitting his head on a hard surface after his fall (3). The indictment presents the moment of Elvan’s injury as his own tragic fate, if not his own making, which is caused either by being among the protestors or by hitting his own head. While some reports within the indictment note that firing gas canisters onto the protestors is deadly and against the protocol of using a tear gas pistol, expert reports struggle to identify the police officer who fired the gas canister. After a chain of inconclusive expert reports on the CCTV footage, in 2016 the facial recognition analysis concludes that the police officer who fired the gas canister is Fatih Dalgalı, on a probability of 30,6%.<sup>122</sup> Dalgalı in his testimony denies the charges by stating that he was not deployed to that area, but then also adding that he does not recall (11).

At the final stage, the indictment delivers Fatih Dalgalı as one bad cop, or 30,6% of him, who may have done wrong, who may have fired the tear gas pistol against protocol in the heat of heavy clashes with protestors. The indictment presents a story, a distorted version of the reality. The indictment carries the claim of presenting the truth by relying on evidence; however, it instead presents a stately fiction which even contradicts the evidence presented

---

<sup>121</sup> The indictment presents a summary of three reports, in which it states that at the time of the event there were only a handful of protestors left and that none of the protestors used firecrackers or other explosive material. The police, however, were firing tear gas capsules while carefully aiming on the protestors (8).

<sup>122</sup> The indictment mentions another suspect, Ayhan Pekgöz who matches 28,9% with the perpetrator on the CCTV footage. However, considering other bodily features, the indictment concludes that the perpetrator is Fatih Dalgalı (11).

within the indictment. Legal interpretation, or re-narration, dismisses the systematic police violence and hence, turns a blind eye to the origin of violence that killed Berkin Elvan. Elvan's fall appears as if it was an act of God. However, as argued in Chapter 1, what appears as fate is the organised and systematic police violence. As the indictment singles out the event as the probable wrongdoing of one person, Fatih Dalgali, it renders systematic police violence invisible before the law.

### **The Ghostly Perpetrator**

Shoshana Felman (2002) elaborates on the significance of *seeing* in a trial. First, she relates the significance of seeing in relation to the theatricality of a trial, which, in historical cases, appear in the form of 'a show trial, a spectacularized case whose evolving courtroom drama was reproduced throughout the world, magnified and multiplied by millions of television screens' (81). Felman here refers to the O.J. Simpson trial, in which the theatricality of the trial is something reminiscent of a reality show, but also to the Rodney King trial, which is considered to be the first visually recorded account of racialised police violence in the US courts.<sup>123</sup> Although state violence trials lack the entertainment aspect of a show trial, nonetheless they attract a certain audience. State violence trials are public spectacles as they are observed, litigated, witnessed, reported; in other words, they are *seen*. Furthermore, state violence trials can be understood as political trials (see Ertür 2015), which expose the working structure of the state and its deadly manifestation to the public eye. In addition to the theatrical aspect, Felman adds that seeing is crucial to the operation of a trial, as evidence is something 'based on seeing', either in the form of eyewitness accounts, CCTV footage, or in terms of recognising the meanings that an evidential document conveys: 'The strongest proof admitted by the court is proof corroborated by the eye' (81). Yet, as Felman observes, the trials often fail to see the issues that are central to the case. The *judicial blindness* that Felman observes at the cases she analyses are mainly related to the blindness of the jurors towards the visual signs of domestic abuse (battered face) and racialised police violence (filmed police beating of a black man).<sup>124</sup> In the Elvan case, however, what is *unseen* by the legal process so far is the systematic and organised nature of police violence. If the indictment makes the organised and systematic

---

<sup>123</sup> A recent BBC article recalls the Rodney King trial before the George Floyd trial as 'one of the first instances such brutality had been filmed' and publishes the courtroom sketches from the King trial with the title of 'Rodney King Trial: Sketches reveal drama from court'. See; 'Rodney King Trial: Sketches Reveal Drama from Court' 2021. *BBC News*, 5 March. Accessed 28 September 2021. <https://www.bbc.co.uk/news/world-us-canada-56297810>

<sup>124</sup> In cases Felman analyses, what the trials fail, or rather refuse, to see are two beatings, one indicating to domestic violence in the O.J. Simpson case and the other to police violence based on race in the Rodney King case (81).

nature of police violence invisible before the law by re-narrating the event, the trial process renders the perpetrator invisible before the law.

From the very beginning of the court hearings, the accused officer Fatih Dalgalı had been absent from the courtroom; instead, Dalgalı attended virtually via video communication. The Elvan family's lawyers opposed this, as the video image was never clear enough to *see* him, to identify him. Hence, they contended that he must give his testimony before the law in person. Indeed, the trial judge passed on the Elvan family lawyer's request to the officer Dalgalı at the first hearing by asking, 'Would you like to give your testimony in here?' (Berkin Elvan Davası). Dalgalı refused on the grounds of concerns over his security, and the court accepted his reasons for not appearing before the court in person. At each hearing the Elvan family's lawyers demanded his arrest and the court declined. Rather than bringing him before the law, which would have resolved the conundrum of verifying the identity of the perpetrator, instead the trial occupied itself with a never-ending cycle of re-collecting evidence to match Fatih Dalgalı with the perpetrator seen on the CCTV footage. However, there is something interesting in that exchange between the trial judge and the police officer, which, I suggest, resembles Erdoğan's *father-state* performance. In a similar manner to Erdoğan's comparison of the two sons, which I discuss in Chapter 2, the trial judge is benevolent towards the accused police officer, while dismissing the violence inflicted upon Berkin Elvan and the family's demand of accountability. The trial judge turns a blind eye to the violence that killed Berkin Elvan, and *unsees* it; by turning a blind eye, he is performing its repetition in the courtroom. His legal performance of the *father-state* repeats the police violence and exposes law's 'blind spot' (Felman 2002: 83). Furthermore, there is something common between Karamanoğlu, the favoured son of Erdoğan's father-state performance and the perpetrator Fatih Dalgalı. As the former was a military veteran and the perpetrator is a police officer, they both issue violence on behalf of the state towards the disobedient ones. Thus, I suggest Dalgalı's excusal from appearing before the law is a stately pardon towards the violence inflicted on its behalf, which takes the form of *unseeing*, or *juridical blindness*.

Felman suggests that '[e]very trial [...] by its very nature as a trial, is contingent on the act of seeing' (81). However, as the Elvan trial demonstrates, the (over) emphasis on *seeing* itself may present challenges to the legal process. In 'Law and the Evidential Image' Piyel Haldar (2008) reminds us that visual evidence can be manipulated, 'torn apart and rendered unstable' to obtain a meaning, although it is often favoured due to its 'potential to tell an objective truth' (140). The evidential image promises accuracy, an accurate representation of the truth; however, on the other hand, especially when the digital images are concerned, it is

easily manipulated (142). In Berkin Elvan's trial, distortion of visual evidence, *seeing*, takes place in two forms. The first one is Officer Dalgali's distorted appearance through video conference, which disguises his bodily features from the courtroom, and the second is the distortion of the CCTV footage by the Scientific and Technological Research Council of Turkey (TÜBİTAK), which renders the perpetrator unidentifiable.<sup>125</sup> The more the officer in the CCTV footage and the accused officer Dalgali become unseen, unidentifiable, faceless figures, the more they separate from one another. This gap of uncertainty constitutes the possibility of Dalgali's acquittal. Indeed, other police officers who testify as witnesses rely on this gap between the two faceless figures. They state that they can neither identify the officer on the CCTV footage nor identify Fatih Dalgali from the video conference. A collective performance of amnesia follows their unseeing, regarding the moment of the event as how they all respond: *I do not know, I do not recall*.<sup>126</sup> This reveals an interesting paradox which runs throughout the trial process: although the trial prosecutes Fatih Dalgali, on the other hand, the trial occupies itself with identifying the perpetrator on the CCTV footage. The importance of *seeing*, and of visual evidence as a privileged form of evidence, obstruct the legal process. The legal conventions of verifying the identity of the perpetrator prevents the trial from progressing towards a decision. In that regard, the Elvan trial exposes how the legal convention of identifying, *seeing*, the perpetrator could transform into a mechanism of delay which prevents its own progression. At that point, the hearings perform a repetition, a repetition of *unseeing*, which, to put it in Felman's terms, repeats the violence and trauma. The trial becomes violent and traumatic as it refuses to see the violence and trauma 'that the trial was supposed to remedy' (81-82).

The *juridical blindness* of the Elvan trial operates through rendering the perpetrator into a faceless, ghostly figure, which recalls Benjamin's (2007 [1978]), and later on Derrida's (1992a [1990]), comments on the ghostliness of police violence that I present in Chapter 1. To reintroduce these briefly, both Benjamin and Derrida read the police as a faceless figure whose 'power is formless, like its nowhere tangible, all-pervasive, ghostly presence in the life of civilized states' (Benjamin 2007 [1978]: 287). Furthermore, the Elvan trial demonstrates that

---

<sup>125</sup> At the end of the second hearing the court decides to send the CCTV footage to TÜBİTAK and to Turkish Radio and Television Corporation (TRT) the national public broadcaster for its enhancement. While TRT responds negatively to the court's orders by stating that they lack expertise, according to Elvan family lawyers TÜBİTAK distorts the already unclear CCTV footage. (see; '3. Duruşma: TÜBİTAK Raporu Dosyaya Sunuldu'. 2017. *Faili Belli*. 16 November. Accessed 28 September 2021. <https://www.failibelli.org/dava/berkin-elvan-davasi/#dava-zaman-cizelgesi>)

<sup>126</sup> Police witness testimonies were taken on the 9<sup>th</sup> hearing on 28 November 2018. For the hearing report, see Berkin Elvan davası.

the ghostliness of the police extends to the legal process, rendering the perpetrator-police intangible and unaccountable. Regarding the Elvan trial, it is possible to argue that the court consciously hid the perpetrator from sight: from the sight of the Elvan family, from the sight of the public and also from the sight of the law. To understand the reasons behind this reflex, it is necessary to discuss the relationship between the police and the law.

Michel Foucault in his lectures published under the title of *Security, Territory, Population* (2009), elaborates on the police in relation to the law; he writes, ‘Of course, from the beginning of the seventeenth century the idea of a police power will be clearly distinguished from a type of exercise of royal power, which is the power of justice, juridical power. Police is not justice’ (339). And he continues:

Of course, like justice it derives from royal power, but it remains clearly separated from justice. At this time, police is in no way thought of as a sort of instrument in the hands of juridical power, as a sort of way of really applying regular justice. It is not an extension of justice, it is not the king acting through his apparatus of justice; it is the king acting directly on his subjects, but in a non-judicial form (ibid.).

Thus, Foucault understands the police as ‘a permanent coup *d’État* coming directly from the royal power’ (340). I cross-read Foucault’s remarks on police power with Benjamin’s comments on police violence which, according to Benjamin, performs both *lawmaking* and *law-preserving* functions of violence. In other words, police violence performs violence that establishes the legal system and sustains, or preserves it, through its repetition. In that regard, to put it in Foucault’s terminology, the combination of the two functions is what makes police violence non-judicial, or rather beyond judicial, a permanent coup, and hence, I argue, unaccountable. Following Benjamin, Butler (2020) exposes this association between police violence and the law:

Although law-instating [lawmaking] and law-preserving *Gewalt* are described by Benjamin as distinct, the police operate both forms, which implies that the law is “preserved” only by being asserted, again and again, as binding. The law thus depends on the police or the military to assert and preserve the law (125).

If the indictment’s re-narration of the event presents an obscured version of Elvan’s encounter with the police, hence preventing the systematic and organised police violence from appearing

before the law, the trial visually disguises the police officer, who enacted violence on behalf of the state. As the law depends on the police, and its violence, for its preservation, the Elvan trial turns a blind eye to the police and its violence by rendering him unidentifiable, faceless. Nonetheless, it is still possible to hear him talk when called by the court, as if he is communicating behind the shadows. Thus, the perpetrator as a material, human figure transforms into a ghostly figure. However, his absence is very present within the courtroom, his invisibility renders him visible: ‘*I see you are not there.*’ (Gordon 2008 [1997]: 16). His absence has a haunting presence. In *Ghostly Matters*, Avery F. Gordon (2008 [1997]) notes that ‘the ghost is primarily a symptom of what is missing. It gives notice not only to itself but also to what it represents’ (63). Through the ghostly presence of the perpetrator Dalgalı, the mythical omnipotent, omnipresent, state enters the courtroom.

Yet, all of a sudden something unexpected, or what is expected from the legal process, happens that ruptures the repetition of *unseeing*. On 4 April 2018, the Istanbul Gendarmerie Criminal Lab report exposed the identity of the perpetrator and confirmed, this time with a higher percentage (75% and above), that the perpetrator seen in the CCTV footage is ‘highly likely’ Fatih Dalgalı (Istanbul Gendarmerie Criminal Lab Report 2018). Although Dalgalı is still absent in the courtroom, his ghostly presence gradually comes into existence on the case file. The witnessing protestor’s vague, ghostly descriptions of the perpetrator gain materiality: a name, a body, and even humanly, mortal traits, such as hair-loss.



**Figure 4:** Fatih Dalgalı Istanbul Gendarmerie Criminal Lab Report  
The image on the left is from the CCTV footage, and the image on the right is Fatih Dalgalı, (Istanbul Gendarmerie Criminal Lab Report 2018).

Although, the court received an evidential verification on the perpetrator’s identity, Officer Dalgalı’s exposure launched yet another endless cycle of evidence collection. The court continued with more police testimonies, ordered a crime scene investigation in 2019 (six years

after the incident), and ordered further expert reports. After Dalgali's exposure, the so-called fact-finding mission of the trial accelerated, this time to disassociate the officer Dalgali from the charges. I read this period, between Dalgali's exposure and the verdict in June 2021, as *Kafkaesque*, as the trial resembles a Kafka parable that is choked in procedures, forms, reports from various institutions and experts all pretending to be doing their part in this mundane but yet mystical operation. James R. Martel (2002) uses the term *Kafkaesque* as something indicating 'the inevitability of defeat' (62). However, at the same time, Martel suggests, in reference to *the Trial* and *Before the Law*, that Kafka's parables illuminate the ordinary operation of the arbitrariness of justice (67-71). What I observe as *Kafkaesque* regarding the Berkin Elvan trial is the ordinary, mundane operation of its cover up of the police officer through an endless repetition of legal convention. What is interesting is that it is this mundane repetition that, at the same time, seems mystical, almost conspiratorial. The myth of the all-mighty state continues to haunt the trial.

On 24 January 2020, the court received another Gendarmerie expert report upon request (Expert Report 2020). The report mentions that the court was not satisfied with relying only on the CCTV footage to decide on the accused officer's culpability, and hence ordered the expert report to consider all the evidence to determine the perpetrator's culpability (3). Considering all the evidence, the report states that the police officer's use of force was not in violation of the regulations despite finding him responsible for the incident (2). While determining the intent, the report notes that it is not possible to aim to shoot with a tear gas gun, and hence concludes that the incident must be 'involuntary and momentary' which indicates lack of intent (3). What is remarkable about this report, however, is that, in addition to the police officer, it finds Berkin Elvan culpable for his own death. The report presents a legal version of Erdoğan's comments on Elvan's death, by finding Elvan culpable for being among the non-peaceful protestors, for acting recklessly (3-4).<sup>127</sup> What is also worth noting here is that the report does not address the perpetrator by name, but rather describes him as 'the police officer in the CCTV footage who appears with a bandage on his arm'. On the one hand, the report distances the police officer from the act by finding Elvan responsible for acting recklessly, and on the other hand, disassociates his identity again from the act by finding an

---

<sup>127</sup> The report finds the officer Dalgali as first degree culpable (*asli kusurlu*) and finds Elvan as second degree culpable (*tali kusurlu*). I understand the report's findings as an attempt to reduce Dalgali's sentence from probable intent to kill to recklessness, as the article 22(6) of Turkish Penal Code states, 'A penalty shall not be imposed if, as the result of a reckless act, the offender becomes a victim to such a degree (by reference to his personal and family circumstances only) that imposing a penalty becomes unnecessary. Where the offence is committed with conscious recklessness then penalty to be imposed may be reduced by one-sixth to one-half'.

unknown, unidentified, officer partially responsible for Elvan's death. Between the first Gendarme report of 2018, which exposed the police officer, and the most recent one in January 2020, which finds Elvan responsible for his own death, the evidence provided by the institutions and experts poked holes in the case file to *unsee* the police violence and the perpetrator Fatih Dalgali.

The findings of the final report reflect on the prolonged verdict, which comes at the final hearing on 18 June 2021. The court sentences Fatih Dalgali to sixteen years and eight months to prison with the charge of probable intent to kill despite the family lawyers' demand for him to be sentenced with direct intent to kill. The court explains the reduction of the sentence from life imprisonment, which is the highest sentence for probable intent to kill, in relation to weakness of intent and in consideration of the impact of the sentence on the accused. Despite the sentence, the court did not order his arrest and the officer Dalgali is still on duty as a police officer. In that regard, even when uttering the verdict, the court performed its failure. The court's failing verdict is rather interesting as it challenges the common understanding of law and the operation of legal violence. Furthermore, the Elvan trial verdict poses a challenge to J. L. Austin's elaboration of legal performatives. To briefly mention Austin's interest in legal performatives, which he refers as 'acts in the law' (19), and their privileged position in the Austinian notion of performativity, he notes: 'Examples are more easily seen in law; they are naturally not so definite in ordinary life, where allowances are made' (36). Following this, the most obvious example of the legal performative is the moment of uttering a verdict which Austin refers to as *verdictives*: 'verdictives, are typified by the giving of a verdict, as the name implies, by a jury, arbitrator, or umpire' (151). However, I argue, what we rather observe in the Elvan trial is a failed legal performative; in which the utterance does not deliver the action that it utters. In other words, the court actually nullifies its verdict. It rather concludes the trial without a conclusion and keeps the decision in suspense.

Not only had the perpetrator been excused from appearing before the court throughout the four-year-long trial process, he also was excused from his sentence. This generates another issue regarding the fact that who awaits before the law is not the accused perpetrator. It is the Elvan family and their lawyers, who initiate the legal proceedings, and wait for it to function to deliver accountability. While the Elvan family was present at every single hearing, waiting before the law, waiting for justice and accountability, the accused officer Dalgali was exempt, excused, from standing before the law. This dichotomy reveals a fundamental question regarding the state violence trials: *Who is on trial?*

## Waiting Before the Law

Contrary to the perpetrator's ghostly presence/absence, the Elvan family has always been present at the hearings, waiting for the prosecution to proceed, waiting for a verdict, for accountability, waiting for justice. Since 2013 the family has been waiting for the law to operate. The act of waiting dominates and defines their experience. Their waiting is not only a reflection of the historical waiting for (divine) justice, but also reflects the experience of many others who are kept waiting by the legal processes of accountability in the aftermath of state violence in Turkey. 'A trial and a literary test do not aim at the same kind of conclusion. Nor do they strive toward the same kind of effect', writes Felman (1997), and continuing; 'A trial is presumed to be a search for truth, but technically, it is a search for a decision, and this in essence, it seeks not simply truth but a finality: a force of resolution' (738). At the Elvan trial, however, what we rather witness is the absence of a resolution, despite a verdict. The court's verdict fails to conclude which, as discussed above, I read in terms of the legal repetition of failure that fails to *see* the violence. Hence, the absence of a resolution is a form of legal performance that fails to hold state violence accountable.

At first glance, such practices of failure may appear contradictory to the law, and to its working principles, as they indicate its impotence rather than to its authoritative force. In the scholarship, the force, and hence the violence, of law is often considered in relation to its decision-making powers, either in terms of its 'naming practices' – as Butler (2020) points out "“This will be law,” or “This is now the law”" (124) – which is then followed by its defining powers, or in terms of deciding on someone's fate, by uttering a verdict (see Cover 1986). However, what we witness in the Elvan trial is the suspension of a decision, a departure from naming and defining the powers of the law, which is common in state violence trials. This suspension could also be understood as a decision itself, one that is not uttered but rather practiced through its failure. In that regard, I suggest that the Elvan trial exposes a form of legal violence that is specific to state violence trials, which is yet to be explored in the scholarship, that operates in the form of legal action through inaction. Its violence manifests itself in the form of waiting, or rather through keeping the subject waiting. This violence emerges from the grey area of the possibility of justice, in Derridean terms, when justice is always a possibility that is yet to come. If so, how to approach the law's silent violence, how to understand its doings, how to see it, register it, as a form of legal violence? Felman (1997) notes that, contrary to a trial's search for a decision, the occupation of 'a literary text is [...] a search for meaning, for expression, for heightened significance and for symbolic understanding' and she suggests that we 'make use of this difference [...] by reading them *across* each other and against each

other' (738). To unpack the legal mechanism of waiting, I follow Felman's suggestion, and below I present an analysis of the Elvan family's waiting before the law through Franz Kafka's rich parable 'Before the Law' (2007: 171-172).

To begin with, a brief presentation of Kafka's parable: A countryman waits for his lifetime in front of a door to be admitted before the law. The door is guarded by a doorkeeper. When the countryman comes before the law and asks to be admitted, the doorkeeper does not reject the countryman's wish but leaves it open as a future possibility: 'That's possible,' says the doorkeeper, 'but not now'' (171). Although the door is never closed, the doorkeeper intimidates the countryman by stating, 'From room to room there are doorkeepers, each one mightier than the one before' (ibid.). And so, the countryman decides to wait for the doorkeeper's permission, whilst thinking, 'the law is supposed to be open to anyone at any time' (ibid.). The doorkeeper interrogates him at times; however, the interrogations do not lead to his admission. As the countryman tries various ways to gain admission, he gets fixated on the doorkeeper forgetting the existence of others following the one in front of him. At the end of his life the countryman wonders, 'Everyone wants to go to law, how is it then that over so many years no one but me has tried to gain admission?' (172). The parable ends with the doorkeeper's answer: 'No one else could gain admission here, because this entrance was intended for you alone. Now I am going to shut it' (ibid.).

Surely, the parable, as a literary text, describes an exaggerated version of the Elvan family's experience of waiting before the law. However, its exaggerated account makes the legal mechanism of waiting intelligible. James R. Martel (2011) comments on what I note as an exaggerated account in Kafka's parable in relation to the *stuckness* of his characters: 'Rather than try to save his characters from their delusions, Kafka gives them over to them, but in such a way as to subvert and distort their object' (63). Indeed, Kafka's parable presents the mechanism of waiting through the subject's – the countryman's – experience, exposing the relationality between the law and the subject. In that regard, Kafka's parable corresponds with the Elvan family's experience of the law, in terms of their waiting in anticipation to reach to the law, which attributes power to the law, and in a cyclical manner, transforms the subject. However, the parable's subversive potential is limited to its exposure of law's waiting game, in terms of its powers and violence. By destining his protagonist to wait before the law unto his death, Kafka does not only close the door of the law, but also closes the door to his subject's subversive potential. I elaborate on this potential further in reference to the Turkey-specific context. Before doing so, however, first I would like to expand the discussion on the legal

mechanism of waiting and its violence to present a conceptual framework for the family's waiting before the law.

Derrida (1992b), in his reading of Kafka's parable, which was originally presented as a lecture in 1982,<sup>128</sup> refers to the parable as 'the story (of what never happens)' (206). This inaction, however, does not indicate a lack of legal violence: 'In fact, here is a situation where it is never a question of trial or judgement, nor of verdict or sentence, which is all the more terrifying. There is some law, some law which is not there but which exists. The judgement, however, does not arrive' (205). Derrida's quote is relevant to the violence that comes with the failure of the verdict in the Elvan case. Resembling the ghostly perpetrator, the law also gains phantom-like qualities due to its lack of materialisation. This phantom-like law haunts the family, as it haunts the countryman: 'The man from the country has not expected such trouble; the law is supposed to be open to anyone at any time, he thinks' (171). However, Derrida highlights the labyrinths of the law when he writes that 'one never accedes directly either to the law or to persons, one is never immediately before any of these authorities; as for the detour, it may be infinite: the very universality of the law exceeds all finite boundaries and thus carries this risk' (196). Derrida's comments on the law's infinite detours resonates with the Elvan case's long path from local court, to high court, from national jurisdiction to international jurisdiction. Indeed, the trial judge signals to the endless detour at the end of the hearing on 5 February 2020, almost three years after the first hearing, which may be considered as a foreshadowing to what awaits the Elvan family. First, the trial judge made a *promising* statement in which he stated that 'despite the obstacles we have now completed 90% of the case file' (Berkin Elvan Davası). Although his statement anticipates an ending, a resolution, he continued by reminding of its infiniteness: 'there are contesting issues on the case file which would be discussed among the high courts. The decision of this court is not final' (ibid.). Reminiscent of the many doors, and doorkeepers in Kafka's parable, the legal process in the Elvan case appears *as if* it is progressing from one stage to the other since 2013, while holding the Elvan family in suspense with its promise. Derrida elaborates further on this matter:

He [the countryman] wants to see or touch the law, he wants to approach and 'enter' it, because perhaps he does not know that the law is not to be seen or touched but deciphered. This is perhaps the first sign of the law's inaccessibility, or of the delay it

---

<sup>128</sup> The part of the French text was then published under the title 'Devant la loi' as a part of *Royal Institute of Philosophy Lecture Series* (see Derrida 1983). In this work, I use the completed version that is published under the title 'Before the Law' at *Acts of Literature* (see Derrida 1992b).

imposes upon the man from the country. The gate is not shut, it is 'open as usual' (says the text), but the law remains inaccessible (197).

Many questions arise from the juxtaposition of the open door of the law and its inaccessibility. Why does the countryman continue to wait in agony to be admitted rather than entering through the door? Why does the countryman not just leave? Interestingly, Derrida reads the countryman's act of waiting in anticipation as something related to his naivety, or even his ignorance,<sup>129</sup> rather than relating it to the legal operation itself. In a similar vein, Martel (2011) mentions the failures of Kafka characters: 'Kafka's characters desperately try to conform to the various powers that they see as organizing their life, but they fail, usually miserably, in their attempt' (63). On the contrary, in reference to the discussion above, I read this failure as the failure of the law itself, which fails for account for the violence inflicted upon Berkin Elvan, which fails to see the perpetrator, which delivers an ineffective verdict...etc. In other words, it is the law that fails to perform the powers it is set to perform. However, while I oppose registering law's failure to the family, I do recognise that the family's expectation of the law attributes power to the law. In a similar vein to the countryman's position, waiting before the law generates suspense, in the sense of expectation and anticipation, while holding the subjects in suspense. Furthermore, keeping the subjects waiting is not only a demonstration of legal power, but in a performative manner, it is also something that attributes power to the law. As Butler (1999 [1990]) observes, in reference to Derrida's reading of the parable:

There the one who waits for the law, sits before the door of the law, attributes a certain force to the law for which one waits. The anticipation of an authoritative discourse of meaning is the means by which the authority is attributed and installed: the anticipation conjures its object (xv).

Thus, the law, as an awaiting apparatus, derives its power from the performance of waiting. To put it in terms of Kafka's parable, what establishes the law and what renders the countryman's waiting an act of waiting before the law is the co-performance of the countryman and the doorkeeper. Their collective performance of waiting establishes the law, or rather manifests

---

<sup>129</sup> Derrida speculates on the countryman's literacy: 'Perhaps man is the man from the country as long as he cannot read; or, if knowing how to read, he is still bound up in unreadability within that very thing which appears to yield itself to be read' (197).

the law.<sup>130</sup> In return, the act of waiting subjectifies and dominates the countryman and his life. In his reading of Kafka's parable, James R. Martel (2012) highlights how the act of waiting before the law transforms the subject by rendering him 'an obedient subject, subordinate to and reflective of an absolute, sovereign authority in whose name he continues to wait' (71). However, if it is the subject's own waiting that attributes power to law, then there must be a potential for its subversion. I argue that Martel fails to recognise this potential as he, as does Derrida, considers the act of waiting before the law only as a passive act, something indicating the failure of the subject. At this point, I reiterate Butler's (1993) comments on Althusser's notion of *interpellation*, which I discuss in detail in Chapter 1. Butler argues that compliance with the law also bears potentials of its 'rearticulation of the law against the authority of the one who delivers it' (82). Indeed, although I agree with Martel on law's subjection through the mechanism of waiting, I observe both active and passive forms of waiting in the Elvan family's waiting before the law. On the one hand, they are kept waiting, pacified and subjectified by the waiting powers of the never-ending legal process; but on the other hand, they actively engage with the law, through which the family transform their agency against the state, the law and its waiting powers. I read the passive and active forms of waiting in relation to two modalities of waiting that Peter D. Dweyer observes (2009): 'Situational waiting is an experience fully embedded in time. Existential waiting is seemingly removed from time or rather, from the meanings – linear and repetitive, yet endlessly consuming, consumed and irreversible' (21). In that regard, regarding Elvan family's act of waiting, I understand situational waiting as an active waiting and existential waiting as a passive waiting, which corresponds to the passive waiting for justice to come. In the Elvan family's experience, both forms of waiting coexist; indeed, this significant pattern can be observed as a common trait in Turkey's state violence trials.

Zerrin Özlem Biner and Özge Biner (2019), in their edited book on waiting, discusses different forms and practices of waiting in Turkey's socio-legal and political context. In their interview with prominent philosophy professor Nilgün Toker, Toker elaborates on the powers of waiting and its use in authoritarian regimes (25-44). Although Toker suggests that in Turkey sovereign power over time functions through creating a regime of uncertainty, rather than a regime of waiting (29), nonetheless, she reads waiting as a sovereign tool that aims to diminish the agency of the waiting subject (27). Regarding the waiting subject, Toker highlights a

---

<sup>130</sup> Derrida also recognises that the doorkeeper too is waiting before the law with the countryman. The difference is however, while the doorkeeper has his back to the door, in other words to the law, and the countryman faces towards the law. Derrida reads it as the countryman's respect to the law (200).

separation between will and the agency. According to Toker waiting, or to be kept waiting, creates a gap between the will of the subject and their agency; as a result the subject cannot actualise their own will (ibid.). Thus far, Toker elaborates in a similar vein to Derrida and Martel regarding the suppressive function of waiting on the agency of the waiting subject. However, according to Toker, and Zerrin and Özge Biner, the waiting subject can transform themselves through action and re-construct their agency (34). In that regard, contrary to Derrida and Martel, they not only recognise the active form of waiting but also provide a framework to register the transformation of the subject which can resist its subordination.

Never-ending or inconclusive state violence trials are common practices in Turkey's politico-legal culture. Surely, there is a tactical element in overstretching the time due to the statute of limitations; that the legal process becomes a never-ending *Kafkaesque* spiral until the time bar expires. As discussed in the previous section, in the meantime, the legal process ties itself in knots, making the event and the association between the event and the perpetrator(s) even more unintelligible. In doing so, the *Kafkaesque* legal procedure triggers *conspiratorial imagination* as Ertür (2016) calls it, closing the gap between the fact and the fiction. When the law fails to see the violence, it repeats the past failures, as it does so, the case loses its singularity and become a piece in the history of state violence and its unaccountability. When the law turns a blind eye to the violence, the ghostly, almighty perpetrator *the State* with the capital 'S' emerges, and waiting for justice gains a rather transcendental, existential, and hence impossible, meaning. And the subjects get stuck in this suspense: 'The law is transcendent and theological, and so always to come, always promised, because it is immanent, finite and so already past. Every "subject" is caught up in this aporetic structure in advance.' (Derrida 1992a [1990]: 36).

It is possible to observe this passive, and impossible, form of waiting, in the Elvan family's waiting. Moreover, the more they try to rupture this suspense – by appealing to various other legal means such as the Constitutional Court – the more they are entangled with the law. Furthermore, not only does the process subjectify the Elvan family in terms of dominating their agency; but their persistent engagement, in juxtaposition to the absence of the perpetrator, causes a shift in roles. Elvan's sister Özge Elvan verbalised this shift during the press statement after the seventeenth hearing: 'It is us being prosecuted in that courtroom'.<sup>131</sup> Elvan's sister's words echo Derrida's observations on Kafka's parable: 'but since he is *before* it because he

---

<sup>131</sup> 'Gülsüm Elvan: Yeter Artık Biz Kardeşçe Yaşamak İstiyoruz'. 2020. *Bianet*, 23 September. Accessed 28 September 2021. <http://bianet.org/bianet/insan-haklari/231422-gulsum-elvan-yeter-artik-biz-kardesce-yasamak-istiyoruz>

cannot enter it, he is also *outside the law* (an outlaw)' (Derrida 1992b: 204). However, if the law always subjectifies the subject as a suspect, is it possible for it to be otherwise? In that regard, I consider the Elvan family's waiting before the law as an act that demystifies the law, in terms of its authority and promise of justice.

Özgür Sevgi Göral (2019) elaborates on the act of 'waiting for justice' in relation the cases of enforced disappearances in Turkey in the 1990s (45-85). Göral suggests that the relatives of the forcibly disappeared endure different modes of waiting as time passes; from waiting for their relatives to come back alive to waiting for their bones (55-60). Throughout this time, Göral observes a change in the meaning of the perpetrator. She suggests that while in the first stages of waiting, the perpetrator refers to those who actively carried out the act of kidnapping and killing; at the final stages of the waiting, however, the perpetrator stands for the whole state (58-59). I interpret this expansion in the meaning of 'perpetrator' in relation to unaccountability; as the law fails to account for and register the violence inflicted on their relatives, the meaning of the perpetrator expands to cover all state structures. As more and more state institutions and officers contribute to *juridical blindness*, it becomes harder to distinguish the juridical repetition of violence from the initial act of violence. Göral's observation on the expansion of the meaning of the perpetrator, presents a lens for us to comprehend the Elvan family's wish to prosecute the state. The more they are kept waiting before the law, the more meanings are attached to the figure of the perpetrator. As the time passes, the perpetrator becomes a ghostly haunting figure, and becomes synonymous with the omnipotent and omnipresent state. *How many officers does it take to prosecute the state?* Moreover, interestingly, Göral refers to the relatives' waiting for justice as an impossible demand while adding that the relatives would never stop their search for justice, despite recognising the impossibility of their action. Göral reads their persistent search for justice as a form of resistance against the state's erasure of the disappeared subject (79).<sup>132</sup>

I suggest that what Göral observes is not a dilemma that indicates to the *stuckness* of the subject, but rather it is an act of disobedience which bears the potential to rupture the mystical authority of the law, and the state. Surely on the one hand, as Toker raises, the relatives of the enforced disappearances are in need of an official recognition (35). They need the bones of their relatives almost as a gesture of a confession from the state, which would serve as a recognition, and acceptance, of the fact that their relatives were forcibly disappeared. On the other hand, however, as both Toker and Göral highlights, the relatives of the forcibly

---

<sup>132</sup> Göral raises this point in reference to Banu Bargu's work on the matter. See Bargu 2015.

disappeared have transformed and re-constructed their agency against the subordination of waiting under the name of the *Saturday Mothers* (Cumartesi Anneleri).<sup>133</sup> I observe such a transformation of subjectivity in the Elvan family's waiting. On the one hand, they engage with the law, to gain an official recognition of the violence that is inflicted upon their son; on the other hand, their persistent presence threatens the mythical powers of the law and the state. Their wait, although impossible, does not pacify or subordinate their agency, but rather their persistent wait holds the law accountable. Their exhausting, and most probably life-long, struggle exposes the failures of the law, its mundane *juridical blindness*. This exposure liberates the facts, and the truth, from being held hostage under the legal narrative. Surely, the law and legal processes of accountability may serve as an official validation of the truth. This is perhaps the only potential of justice that the law and legal procedures of accountability bear. Law as the storyteller, has the potential to narrate history from the perspective of the dead and to resist violent forces which aim to erase the dead from history. Law could borrow its authority from the dead, 'Death is the sanction of everything that the storyteller can tell. He has borrowed his authority from death' (Benjamin 2015: 93). However, we, as the witnesses of violence, do not need the law to account the violence. Thus, in the Berkin Elvan trial, the law prosecutes itself, and it is Elvan family who holds the law into account.

---

<sup>133</sup> Relatives of the forcibly disappeared have been gathering in Istanbul at Galatasaray Square every Saturday since 27 March 1995, hence being known by the name Saturday Mothers. For more on the Saturday Mothers see Ahiska 2014.

## Conclusion

The chant ‘The murderer state will be held to account’, which gave its title to this work, captured the sentiments that were expressed during Elvan’s funeral ceremony. Although I have chanted this slogan countless times before within large crowds of protestors, perhaps being in an observer position this time allowed me to reflect on its meanings. The familiarity of the chant was a painful reminder of the repetitive nature of state violence and its unaccountability. In reference to the global and Turkey-specific political and legal history of state violence, we knew very well the trajectory of the legal process before it began to unfold. *What is the reason behind this familiar repetition?* I wondered whether there is something else that is repeated here, which manifests in the form of violence and unaccountability. The chant not only communicated the demand for accountability, but also referred to the state as the murderer. Although I do not dispute this conclusion, that the state was responsible for Elvan’s death, I wondered when an act of violence becomes state violence and whether the repetition of state violence and its unaccountability have something to do with the meanings and assumptions of the state.

By setting my object of inquiry as understanding the reasons behind the repetitious unaccountability of state violence, this thesis began by unfolding the paradox of accountability in relation to the meanings of the state. As we observed through the Elvan case, the ones who demanded accountability after his death considered the state to be a perpetual murderer, while the ones who act on behalf of the state attributed a different meaning to the state and defended the necessity of its killing powers, even when directed towards its own citizens. Thus, in contrast to the ones who demand state accountability, we observed that the ones who align themselves with the state attribute responsibility to the victims, label the victims as disobedient subjects of the state and blame them for the violence inflicted upon them. Although at first glance the dynamic appears to be a simple opposition that is a result of being against or for the state, when we focus on the meanings attributed to the state and its powers, we recognise that there are overlaps and parallel readings of the state and its violence within the dispute over accountability. Thus, I have posed the question: *How do the meanings and assumptions concerning state violence impact the political demands and legal processes of accountability?*

In doing so, I have aimed to discover connections between the state, law and violence, which produce a repetition of unaccountability, that escape from institution focused analyses. By placing the subject at the centre, I have carried out a three-dimensional analysis which accounts for the meanings and attributions of the state, their impact on the demands and legal processes of accountability and the transformation of the subject. In my efforts to answer the

issue of the unaccountability of state violence, I traced the case of Berkin Elvan, the fourteen-year-old boy who was killed by the police during the nationwide protests of the summer 2013 in Turkey. In so doing, I proposed to shift the focus from institutions to subjects. I do not only aim to stress the central role of the subject — as the actor who performs state violence and who is affected by it — but also, I aim to highlight the central role of the subject in the social and political lives of the institutions. Conducting a detailed analysis of one particular case, from the point of emergence of state violence to the legal process, allowed me to unearth many meanings attributed to the state and our expectations of the law. I was able to register how these meanings and expectations are formed in relation to the different subject positions and how these attributions impact the political and legal responses to the demands of accountability. I argued that the mythical imaginary of the state exposes a particular challenge not because there is no one to hold to account but rather because it hides the ones who must be held accountable. Thus, I also aimed to unveil the subject from the disguise of the mythical constellation of state institutions.

Drawing from critical literature on the state and its powers (Taussig 1992, Navaro-Yashin 2002, Aretxaga 2005), I argued that the state is not a fixed reality, but rather a political, legal, and social, imaginary construct that is animated through the subject and the subjects' performances. Surely, the police officer is not an ordinary subject. The disproportional power dynamic between the police and other subjects is caused by the separation between sanctioned and unsanctioned violence. The police officer, as the subject who holds the legal right to issue violence, in return demands and expects obedience from those whose violence is illegal. In that regard, it communicates that the state has the right to kill its citizens. The police officer is the embodiment of this reminder, which is often visible through the gears and uniforms of the police forces, and hence it is through this reminder of legitimate violence the state materialises on the body of the police officer. I argued however, that this grim scenario does not affirm the absoluteness of the state and its killing powers, but rather indicates a political, and legal, imaginary of such an absolute power. I argued that the police operate through a fantasy of such a power while expecting obedience from the subjects and perform violence on behalf of an imaginary higher subject, *the State*.

The task of analysing police violence and its unaccountability, then, requires us to consider the mythical construction of the state, rather than adopting it as a fixed reality. The state as a modern political and legal construct has a mythical bodily imaginary that is often expressed by the term *body politic*. The bodily imaginary of the state suggests a unified, omnipotent and omnipresent power that is situated in between the godly and the worldly, it is

human-like but also all of its organs work in a machine-like harmony which stands for an analogy for state institutions and bureaucracy. This mythical construction of the state establishes the foundation of our modern political and legal systems and the state's monopoly on violence is legitimised and repeatedly performed to sustain the political and legal systems which are founded on this assumption. It is possible to argue that the issue of unaccountability begins here, as the law grants killing powers to this higher subject called the state but does not address the question of how it could be held accountable. Moreover, the figure of the body appears to play a significant role in establishing the association between police violence and state violence. When the police perform violence on behalf of the state, the police derive its killing powers from an assumed higher subject of the state. The police embody the state through the bodily overlap between the imaginary body of the state and the material body of the police officer. When a police officer enacts violence on behalf of the state, the mythical body of the state manifests through the material body of the police officer, which renders the police officer invisible.

Police, and its violence, has become a part of life as it operates within the everyday life of a state. Rather than an outside enemy, police violence is directed towards the lives of the subjects within the territorial bounds of a state. The constant threat of police violence is camouflaged within the cities. Police are faceless figures, and the uniformity of their uniforms bring anonymity. Thus, as Walter Benjamin (2007 [1978]) and Jacques Derrida (1992a [1990]) highlight, police violence has a ghostly presence. Walter Benjamin's analysis on police violence allows us to comprehend the significant character and operation of police violence through registering its double function; one that establishes the law and the other that sustains it, or to put it in Benjaminian terms, *law-making* and *law preserving* functions of violence. This significant combination makes police violence even more arbitrary and when combined with its ghostliness, I argued, police violence disguises itself as fate.

Indeed, the then Prime Minister, now the President, R.T. Erdoğan interpreted Elvan's killing by the police exactly as his deadly fate. In his response to the death of Elvan, Erdoğan evoked Turkey's state imaginary the *father-state*, which originally materialised in the figure of the modern Turkey's founding father M.K. Atatürk. The theoretical framework on performative utterances (Austin 1975, Butler 1990b, 1999 (1990), 2003, Cavell 2005, Constable 2014, Sedgwick 2003), revealed to us how Erdoğan's rally speech reconstructed the state as he performed his rally speech, which I referred to as a *stately performative*. It is possible to observe a double construction at his stately performative. By evoking the mythical imaginary of the *father-state*, on the one hand, Erdoğan aimed to (re)construct the damaged authority of

the state after the Gezi protests and the following corruption scandals, and on the other hand, he aimed to consolidate his own authority through embodying the figure of the *father-state* himself. His paternalistic address exposed a meaning of the state specific to Turkey, and its powers which are situated in between the sovereign right to kill and the paternal right to punish. According to Erdoğan's *stately performative*, Elvan was a disobedient son of the *father-state* whose death was a fateful outcome of his own disobedience and thus, did not require accountability.

Thus, there is an irreconcilable difference on meanings attributed to the state and to its violence which result in a dispute over the need for accountability between the ones who claim to speak and act on behalf of the state and the others who are subjected to the violent *stately* performatives and hence, position themselves against the state. This difference bears the potential to transform into a violent contestation. This is how I understand the People Front's hostage-taking of the prosecutor Selim Kiraz, who was the head prosecutor of the Elvan case back then. Through their violent action, the People's Front militants claimed to bring justice to Berkin Elvan. Surely there is an element of revenge in their counter-violence, however, I argued the action challenges the mythical imaginary of the state and exposes the limits of its legally constructed monopoly on violence and law. The playful tone of the hostage-takers can be understood in this regard, that their action itself was a mockery of the state, and of its ostensibly omnipotent, omnipresent powers. People's Front's hostage-taking action served as a reminder that although the state claims to hold the monopoly on law, and hence legal accountability, the notion of accountability exceeds those institutional limits. Accountability is a social concept, and recalling the chant, it does not necessarily indicate a legal process. This is also why this thesis sets its question on the notion of accountability and not on impunity. I understand the demands for accountability after the death of Elvan as a social demand which is related to social demands of peace and social justice. Beyond the issue of punishing the perpetrators, accountability refers to a process that consists of facing the past, accepting the wrong-doings and setting up systems to avoid their repetition. Thus, when the institutions fail to satisfy the social and public demands of accountability, the institutions and their authorities, would be challenged. This challenge may come in different forms, whether in the form of public protests, or riots as we have witnessed globally, or in the form of directed actions such as in the case of People's Front's hostage-taking. Nonetheless, they are always violent events as they respond, *counter*, the initial (state) violence. This violence can be directed towards one's own self, as in self-sacrificial actions, or toward the other. I have read the hostage-taking as a combination of the two, that it was a self-sacrificial action which was directed toward the

other, or to put it in other words, it was an action directed toward the other which was only possible by the militant's self-sacrifice. Within this constellation, I observed an intimate association of the subject to the collective demands of accountability; *What makes someone sacrifice their life to bring justice for the dead?*

What caught my attention in the hostage-taking action was the transformation of the subject which I unpacked through the figure of *Antigone*. The hostage-takers were tied to Elvan through a non-traditional kinship bond which had transformed the militants into *militant-martyrs*. The kinship between the militants and Elvan was not necessarily based upon their membership to the People's Front, but rather, I argued, was founded upon their vulnerable position against the state. As working-class young males who are Alevi and/or Kurdish, they were registered as potential disobedient subjects of the *father-state*. The militant's demand to be addressed as Berkin [Elvan] during the negotiations could be understood in that regard that the militant's embodiment of Elvan was possible due to their shared subjectivity. Indeed, their insistence in referring to Elvan by his forename, Berkin, is an expression of this kinship, which claimed Elvan's subjectivity through familiarity. I argued, their self-sacrificial action was both a re-enactment of Elvan's deadly fate but also, similar to *Antigone* taking her own life, the militants took agency over their own fate. In the economy of the Turkey's nation-state their fate was already a deadly one. The militants opposed their subjection and performed their agency by deciding on their own deadly fate while transforming their bodies into *human weapons* (Bargu 2014). Although their hostage-taking was an act of disobedience, it nonetheless appropriated the deadly fate that was attributed to them by the *father-state*. My criticism here is on subject's acceptance of its own subjection. Although, the hostage-takers exposed the mythical construction of the state's monopoly on violence and law through their parodic repetition, nonetheless their action failed to break off from the chains of (deadly) subjection.

It is possible to recognise this double move of rejection and appropriation in their demand and act of justice as well. On the one hand, the militants opposed the unified imaginary of the state by challenging its monopoly on violence and law, on the other hand, they appropriated the state's monopoly on violence and law for their own cause. This double movement can be understood in terms of a parodic repetition of the state which contains the potential of its subversion, however which also runs the danger of re-constructing it as a bad fetish, *maleficium* (Taussig 1992).

Moreover, the action was a direct violence towards the prosecutor and a direct threat to his life. This was not a misdirection, but rather, I argued, a manoeuvre which exposed the

associations between police violence and legal violence. Police violence, when left unaccounted for by the law, continues in the form of legal violence. For the militants, the prosecutor was an accomplice. The hostage-takers demanded the identities of the police officers who were involved in Elvan's killing while threatening the life of the prosecutor. In so doing, the militants were asking for the state to make a choice between the police and the law. The hostage-taker's mocking tone was noticeable here; *who is more valuable? Your murderer police, and the ones who gave the orders, or your precious prosecutor? It's yours to decide.* Perhaps the mocking tone bears a tragic insight that the law's function is to protect the state's monopoly on violence which the prosecutor performs with his life. The disposability of the prosecutor has a glorified position within the *father-state* through the discourses of martyrdom. As both the prosecutor's father and Erdoğan praised the prosecutor, and glorified his death, I argued the *father-state's* love is also deadly in that it also brings death to the ones who are devoted to the state.

The legal process on Elvan's killing allows us to discover how the mythical imaginary of the state, and its violent performance associate with law. The mythical construction of the state brings a particular challenge to the legal process, not because there is no one to hold to account but rather the mythical imaginary of the state hides the ones who must be held accountable. The public demands of accountability and the Elvan family were not satisfied with the prosecution of one police officer, Fatih Dalgacı, who enacted violence, and instead have been demanding for the state to be held accountable. However, the legal process fails to recognise the responsibility of the state. As the perpetrator-subjects hide behind the imaginary subject of the state, their violent acts are left unrecognised and unaccounted for. Thus, often the legal processes of accountability rather result in unaccountability and are experienced as a form of legal violence by the ones who appeal to the law while seeking justice.

What requires our attention as legal scholars is the common operational pattern of waiting and suspense. While the mythical imaginary of the state keeps the law in suspense, the law, or rather the legal process, keeps those waiting in anticipation of accountability. I argued, this pattern reveals a facet of legal violence which is yet to be considered within legal scholarship. In the literature, legal violence is commonly understood in terms of law's authoritative performance. What we rather observe in legal processes of accountability after police violence, or state violence in general, is the silent operation of legal violence through the suspension of legal performative; when law decides not to speak, not to utter a verdict, not to deliver its violence to the accused, in other words not to account for the violence that was inflicted on the victims of police (state) violence. As a result, what we globally observe in state

violence trials is a prolonged legal process which cripples itself; the law performs its own failure.

Yet, the legal process in state violence trials, exposes a function of the law which I refer to as the *waiting apparatus* as it keeps the ones who demand justice, awaiting in anticipation. Waiting before the law, (trans)forms the subject as I observed through the Elvan family's waiting. As I explored through the critical literature on Kafka's 'Before the Law' parable (Derrida 1992b, Martel 2011, 2012), waiting may indicate a passive form, in which the law acquires its power through subordinating the subject in an eternal wait. However, as I argued through the Elvan family's engagement with the law, in reference to the many others before them, the subject's waiting is not only pacifying. It would be wrong to claim that the ones who seek justice, or accountability, after state violence via legal means are not aware of the law's false promise of justice. Especially when certain groups of people who have been systematically targeted by state violence are considered, such as in the case of Berkin Elvan's killing, I find such an argument patronising. Everywhere, people who are disproportionately targeted by the fatal politics of the state do have a collective memory of how law operates in the aftermath of such violence. Their anticipation of justice is not an outcome of ignorance, but rather it is an outcome of a necessity, an urgency for change, for breaking the cycle, for justice. That is exactly why their waiting practices are not only passive but consist of active resistance against the pacifying subjection of the law's waiting game. The Elvan family's active waiting practices have been transforming their subjectivity and resisting against their subordination. The Elvan family's persistent engagement with the law have been challenging the legal repetition of unaccountability, as their actions do not allow the law to close the case in silence. Thus, the Elvan family's legal battle for holding the state into account, also holds the law into account. The Elvan family has been performing their resistance, and persistence, together with the others who have lost their loved ones to state violence. They turn to the public and generate a public discussion on the state's accountability and police violence. I argue this bears the potential of re-thinking and re-constructing accountability from a subject-oriented perspective.

This work offered an analysis of state violence and its unaccountability by repositioning the subject at its centre. Through the Elvan case, I aimed to demonstrate that the subject is situated at the centre of the matter; as it is the subject who performs state violence, who is affected by state violence and who objects to state violence and demands accountability, and it is the subject who acknowledges and accounts for state violence. Thus, the thesis exposes the necessity of pursuing a subject-oriented approach which enables us to consider the mythical foundations of the political and legal institutions through the subjects' performances. In so

doing, it is possible to address the contradictions within the legal and political mechanisms of accountability which result in the repetitive cycle of state violence and unaccountability. This work on the one hand, exposes the limits of political and legal institutions in delivering accountability but on the other hand, opens a path to new possibilities of understanding, and performing, accountability which would not exclude the subject from the process.

Indeed, currently there is a global discussion on police violence and its unaccountability that is accelerated after the Black Lives Matter protests which took the centre stage after the police killing of George Floyd in March 2020. In the US, and in the UK, the public and academic discussions inquire how state institutions, and especially the police, target racialised subjects differently. Thus, contemporary public and academic debates on police violence and its accountability are intertwined with the discussion on systematic and institutional racism, and colonialism. As a result, the current literature on the issue mainly offers analyses that focus on the institutions to expose the systematic operation even when collective acts of resistance towards police violence are considered (i.e. Elliot-Cooper 2021, Bruce-Jones 2017). Although such analyses provide invaluable knowledge on how the violent performances of the state, and its unaccountability, are deeply rooted in racist ideology, they nonetheless encounter the danger of limiting the issue to the failings of modern (Western) political and legal institutions.

On the other hand, the political and legal aftermath of the police killings generates a discussion on the limits of institutions and institution-based processes of accountability. Even when the courts sentence the perpetrator police officers with the highest sentence possible, such as in the case of George Floyd, sentencing one police officer to imprisonment does not correspond with the public's demands of accountability. Although guilty verdicts could be considered as a step forward against the impunity of the police, they fail to address the systematic violence. Hence, the demand for accountability exceeds institutional limits. It urges us to re-think the notion of accountability as a social concept in relation to social justice. The significance of setting the question as an issue of accountability, rather than impunity, could be understood in this regard, as impunity investigates the issue and suggests its resolution within the institutional parameters. Against this, I argue, accountability allows us a broader perspective which enables us to consider the issue in relation to the subject. It urges us to consider the existing disparities within society when law and its performance are concerned. It dares us to think beyond the myth of objectivity and equality before the law. Furthermore, echoing the Elvan family's wish to prosecute Erdoğan and other state officials, I argue that the subject-oriented perspective does not mean we, the witnesses of state violence, should stop demanding that the law recognises, holds to account, the organised nature of state violence.

Legal recognition is necessary for personal and public healing, for peacebuilding and social justice. However, it is not enough to break the vicious cycle of subjection, violence and unaccountability.

Current demands of abolishing or defunding the police could be considered as an outcome of such a search for measures which would break the repetition of police violence. Indeed, the abolitionist project has been a significant source of exposing how law subjectifies certain groups of people while disclosing the continuities between colonial practices, slavery and contemporary policing and incarceration practices in today's criminal justice system. Although it was beyond the scope of this thesis, I consider the questions surrounding state violence and unaccountability as part of the current debates led by the abolitionist project. In a Turkey-specific context, there are analyses that suggest a colonial logic and operation within the borders of the Turkish state. The obvious example of the Kurdish issue — which, depending on the perspective, could be re-formulated as the Turkish issue — suggests that the ones who are excluded from the Turkish fantasy of the *body politic* are the ones who are subjectified as the usual suspects and, hence, subjected to state violence. This is something I briefly touched upon regarding the deadly fate of Berkin Elvan and the People's Front militants. Indeed, the fact that all Gezi martyrs were young men with working-class, Alevi or Kurdish backgrounds displays a continuity which resembles the continuum that the abolitionist project brings to our attention. Turkey's politico-legal history is full of examples of unchecked, unaccounted for systematic violence inflicted upon specific groups. While the ghosts of the ones who were forcibly disappeared in the 1990s still linger among us, addressing the issue of accountability for the dead, for those who were killed by the ones who perform violence on behalf of the state, appears to be more and more urgent each day to enable public healing, peacebuilding, and social justice. Justice does not wait.

On the other hand, the resistance of the relatives who have been seeking for justice after the killing of their loved ones illuminates our discussions on the possibility of accountability and justice. This thesis aims to contribute to such academic and public debates on how to materialise justice, and aims to inquire into the possibility of a legal system that is not founded upon the mythical imaginary of the state. Perhaps only then the law could take its authority from the dead and operate for the living.

## Bibliography

- Abrams, Philip 1988 (1977). 'Notes on the Difficulty of Studying the State'. *Journal of Historical Sociology* 1(1): 58-89.
- Ahiska, Meltem. 2014. 'Counter-Movement, Space and Politics: How the Saturday Mothers of Turkey Make Enforced Disappearances Visible' *Space and the Memories of Violence*. Eds. Estela Schindel and Pamela Colombo. London: Palgrave Macmillan. 162-175.
- Akın, Yiğit. 2007. 'Reconsidering State, Party and Society in Early Republican Turkey: Politics of Petitioning'. *International Journal of Middle East Studies*, 39(3): 435-457.
- Althusser, Louis. 2014. 'Ideology and Ideological State Apparatuses'. *On the Reproduction of Capitalism* London: Verso. 232-272.
- Arendt, Hannah. 2015. 'Introduction' *Illuminations*. Walter Benjamin. London: Penguin. 7-58.
- Aretxaga, Begoña. 2005. *States of Terror: Begoña Aretxaga's Essays*. Ed. Joseba Zulaika. Nevada: Center for Basque Studies.
- Assy, Bethania and Başak Ertür. 2014. 'Law and Resistance – Turkey and Brazil' *Law and Critique* 25: 1-13.
- Austin, J.L. 1975. *How to Do Things with Words*. Oxford: Oxford University Press.
- Avery, F. Gordon. 2008 (1997). *Ghostly Matters Haunting and the Sociological Imagination*. Minneapolis: University of Minnesota Press.
- Bargu, Banu. 2014. *Starve and Immolate: The Politics of Human Weapon*. New York: Columbia University Press.
- Bargu, Banu. 2015. 'Sovereignty as Erasure: Rethinking Enforced Disappearances' *Qui Parle* 23(1): 35-75.
- Bargu, Banu. 2016. 'Why did Bouazizi Burn Himself? The Politics of Fate and Fatal Politics'. *Constellations* 23(1): 27-36.
- Barthes, Ronald. 2009. *Mythologies*. London: Vintage.
- Baykan, Toyar Sinan. 2018. *The Justice and Development Party in Turkey: Populism, Personalism, Organization*. Cambridge: Cambridge University Press.
- Benjamin, Andrew. 2012. 'Fate and Character' *Working with Walter Benjamin: Recovering a Political Philosophy*. Edinburgh: Edinburgh University Press. 69-93.
- Benjamin, Walter. 1998 (1963). *The Origin of German Tragic Drama*. Trans. John Osborne. London: Verso.
- Benjamin, Walter. 2007 (1978). 'Critique of Violence'. *Reflections: essays, aphorisms, autobiographical writings*. New York: Harcourt Inc. 277-300.

- Benjamin, Walter. 2015. 'The Storyteller' *Illuminations*. London: Penguin.83-107.
- Biner, Zerrin Özlem and Özge Biner. 2019. 'Nilgün Toker'le Beklemeye Dair...' *Beklerken: Zamanın Bilgisi ve Öznenin Dönüşümü*. Istanbul: İletişim. 25-44.
- Bruinessen, Martin van. 1996. 'Kurds, Turks and the Alevi Revival in Turkey'. *Middle East Report* 200: 7-10.
- Butler, Judith. 1990a. 'Deconstruction and the Possibility of Justice: Comments on Bernasconi, Cornell Miller, Weber' *Cardozo Law Review* 11 (5-6): 1715-1718.
- Butler, Judith. 1990b. 'Performative Acts and Gender Construction: An Essay in Phenomenology and Feminist Theory'. *Performing Feminisms: Feminist Critical Theory and Theatre*. Ed. Sue-Ellen Case. Baltimore: The John Hopkins University Press. 270-282.
- Butler, Judith. 1997. *The Psychic Life of Power: Theories in Subjection*. California: Stanford University Press.
- Butler, Judith 1999 (1990). *Gender Trouble: Feminism and the Subversion of Identity*. New York and Oxford: Routledge.
- Butler, Judith. 2000. *Antigone's Claim: Kindship Between Life and Death*. New York: Columbia University Press.
- Butler, Judith. 2003. 'Afterword'. Shoshana Felman. *The Scandal of the Speaking Body: Don Juan with J.L Austin, or Seduction in Two Languages*. Stanford: Stanford University Press. 113-123.
- Butler, Judith. 2010. *Frames of War: When is Life Grievable?* London: Verso.
- Butler, Judith. 2011 (1993). *Bodies that Matter: On the Discursive Limits of 'Sex'*. Oxford: Routledge.
- Butler, Judith. 2014. 'Walter Benjamin and the Critique of Violence' *Parting Ways: Jewishness and the Critique of Zionism*. West Sussex: Columbia University Press. 69-98.
- Butler, Judith. 2020. *The Force of Non-violence: An Ethico-Political Bind*. London: Verso.
- Butler, Judith and Gayatri Chakravorty Spivak. 2010. *Who Sings the Nation-State?: Language, Politics, Belonging*. Calcutta: Seagull Books.
- Cavell, Stanley. 1994. 'Derrida's Austin and the Stake of Positivism' *A Pitch of Philosophy: Autobiographical Exercises* Massachusetts: Harvard University Press. 77-96.
- Cavell, Stanley. 2005. 'Performative and Passionate Utterance' *Philosophy the Day After Tomorrow* Massachusetts: Harvard University Press. 155-191.
- Constable, Marianne. 2015. *Our Word is Our Bond: How Legal Speech Acts California*: Stanford University Press.

Cornell, Drucilla. 1990. 'The violence of the Masquerade: Law Dressed up as Justice' *Cardozo Law Review* 11(5-6): 1047-1064.

Cover, R. M. 1986. 'Violence and the Word'. *The Yale Law Journal* 95: 1601- 1629.

David, Isabel and Kumru F. Toktamış, eds. 2015. *'Everywhere Taksim': Sowing the Seeds for a New Turkey at Gezi*. Amsterdam: Amsterdam University Press.

Delaney, Carol. 1995. 'Father State, Motherland and The Birth of Modern Turkey'. *Naturalizing Power: Essays in Feminist Cultural Analysis*. Eds. Sylvia Yanagisako and Carol Delaney. New York and London: Routledge. 177-200.

Derrida, Jacques. 1987. 'Devant La Loi' *Kafka and the Contemporary Critical Performance: Centenary Readings*. Ed. Alan Udoff. Bloomington and Indianapolis: Indiana University Press. 128- 149.

Derrida, Jacques. 1988. *Limited Inc*. Evanston, IL: Northwestern University Press.

Derrida, Jacques. 1992a (1990). 'Force of Law: The "Mystical Foundation of Authority"'. *Deconstruction and the Possibility of Justice*. Eds. David Gray Carlson, Drucilla Cornell and Michel Rosenfeld. New York and London: Routledge. 3- 67.

Derrida, Jacques. 1992b. 'Before the Law'. *Acts of Literature*. Ed. Derek Attridge. New York: Routledge. 181-220.

Derrida, Jacques. 2000. "'A Self-Unsealing Poetic Text": Poetics and Politics of Witnessing' *Revenge of the Aesthetic: The Place of Literature in Theory Today*. Ed. Michael P. Clark. Trans. Rachel Bowlby. California: University of California Press.

De Pizan, Christine. 1994. *The Book of the Body Politic*. Ed. Kate Longdon Forhan. Cambridge: Cambridge University Press.

Dweyer, Peter D. 2009. 'Worlds of Waiting' *Waiting*. Ed. Ghassan Hage. Victoria: Melbourne University Press. 15-26.

Dworkin, Ronald. 1986. *Law's Empire*. Cambridge: Harvard University Press.

Erman, Tahire and Emrah Göker. 2000. 'Alevi Politics in Contemporary Turkey'. *Middle Eastern Studies*, 36(4): 99-118.

Ertür, Başak. 2015. Spectacles and Spectres: Political Trials, Performativity and Scenes of Sovereignty. *PhD Thesis*. Birkbeck, University of London.

Ertür, Başak. 2016. 'The Conspiracy Archive: Turkey's "Deep State" on Trial'. *Law, Memory, Violence*. Eds. Stewart Motha and Honni van Rijswijk Oxford: Routledge. 177-194.

Ertür, Başak. 2019. 'Conscription and Critique'. *Critical Times*, 2(2): 270-284.

Fanon, Frantz. 1965. *A Dying Colonialism*. New York: Grove.

- Fanon, Frantz. 2001 (1967). 'Concerning Violence'. *The Wretched of the Earth*. London: Penguin Books.
- Felman, Shoshana. 1997. 'Forms of Juridical Blindness, or the Evidence of What Cannot Be Seen: Traumatic Narratives and Legal Repetitions in the O.J. Simpson Case and in Tolstoy's "The Kreutzer Sonata"'. *Critical Inquiry*. 23(4): 738-788.
- Felman, Shoshana. 2002. *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*. London: Harvard University Press.
- Felman, Shoshana. 2003. *The Scandal of the Speaking Body: Don Juan with J.L Austin, or Seduction in Two Languages*. California: Stanford University Press.
- Fenves, Peter. 2019. 'Intervention, Encroachment'. *Critical Times*, 2(2): 209-220.
- Forhan, Langdon Kate and Cary Joseph Nederman, eds. 1993. *Medieval Political Theory: a Reader: The Quest for the Body Politic 1100-1400*. London: Routledge.
- Foucault, Michel. 1980. *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*. Eds. Colin Gordon. Trans. Colin Gordon, Leo Marshall, John Mepham, Kate Soper. New York: Vintage Books.
- Foucault, Michel. 2009. *Security, Territory, Population: Lectures at the Collège de France, 1977-78*, Eds. Michel Senellart. Trans. Graham Burchell. Hampshire and New York: Palgrave Macmillan.
- Genet, Jean. 2019. *The Thief's Journal*. London: Faber & Faber Limited.
- Gewirtz, Paul. 1996. 'Narrative and Rhetoric in the Law'. *Law's Stories: Narrative and Rhetoric in the Law*. Eds. Peter Brooks and Paul Gewirtz. New Haven and London: Yale University Press.
- Gilloch, Graeme. 1997. *Myths and Petropolis: Walter Benjamin and the City*. Cambridge: Polity Press.
- Gould, Timothy. 1995. 'The Unhappy Performative'. *Performativity and Performance*. Eds. Andrew Parker and Eve Kosofsky Sedgwick. New York: Routledge. 19-44.
- Gönen, Zeynep and Deniz Yonucu. 2012. 'Legitimizing Violence and Segregation: Neoliberal Discourses on Crime and the Criminalization of Urban Poor Populations in Turkey'. *Lumpencity: Discourses of Marginality/ Marginalizing Discourses*. Eds. Alan Bourke, Tia Dafnos and Markus Kip. Ottawa: Red Quill Books. 75-103.
- Göral, Özgür Sevgi. 2019. "'İmkansız Bir Talep" Olarak Adaleti Beklemek: Kaybedilenler ve Yakınları'. *Beklerken: Zamanın Bilgisi ve Öznenin Dönüşümü*. Eds. Zerrin Özlem Biner and Özge Biner. Istanbul: İletişim. 45-85.
- Haldar, Piyel. 2008. 'Law and the Evidential Image' *Law, Culture and the Humanities* 4: 139-155.

- Hart, H.L.A. 2012. *The Concept of Law*. Oxford: Oxford University Press.
- Hegel. 1975. *Aesthetics: Lectures on Fine Art*. Trans. T.M. Knox. Oxford: Clarendon Press.
- Hobbes, Thomas. 1991. *Leviathan*. Ed. Richard Tuck. Cambridge: Cambridge University Press.
- Honig, Bonnie. 2013. *Antigone, Interrupted*. Cambridge: Cambridge University Press.
- İzgülü, Muzaffer. 1981. *Devlet Babanın Tonton Çocuğu*. Istanbul: Bilgi Yayınevi.
- Kafka, Franz. 2007. 'Before the Law'. *Metamorphosis and Other Stories*. Trans. Michael Hofmann. Great Britain: Penguin Books. 171-172.
- Kantorowicz, Ernst H. 1997. *The King's Two Bodies: A Study in Mediaeval Political Theology*. Princeton and New Jersey: Princeton University Press.
- Karpat, Kemal. 1985. 'The Personality of Atatürk'. *The American Historical Review* 90(4): 893-899.
- Kawash, Samira. 1998. 'Terrorists and Vampires: Fanon's Spectral Violence of Decolonization'. *Frantz Fanon: Critical Perspectives*. Eds. Anthony C. Alessandrini. London: Routledge. 237-259.
- Kitto, H.D.F. (1939) 2011. *Greek Tragedy: A Literary Study*. London and New York: Routledge.
- Köse, Ali Osman. 2015. *Onbeşinde bir Fidan Umudun Çocuğu Berkin Elvan*. İstanbul: Boran Yayınları.
- Kureishi, Hanif. 2016. 'Foreword'. Slavoj Žižek. *Antigone* London: Bloomsbury. vii-x.
- Loizidou, Elena. 2007. *Judith Butler: Ethics, Law, Politics*. Oxford: Routledge-Cavendish.
- Loizidou, Elena. 2008. 'The Body Figural and Material in the Work of Judith Butler'. *The Australian Feminist Law Journal* 28: 29-51.
- Martel, James R. 2007. *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*. New York: Columbia University Press.
- Martel, James R. 2011. *Textual Conspiracies: Walter Benjamin, Idolatry, and Political Theory*. Ann Arbor: University of Michigan Press.
- Martel, James R. 2012. *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty*. Oxon: Routledge.
- Martel, James R. 2018. *Bodies Unburied: Subversive Corpses and the Authority of the Dead*. Massachusetts: The Amherst College Press.
- Mbembe, Achille and Libby Meintjes. 2003. 'Necropolitics'. *Public Culture* 15(1): 11-40.

Navaro-Yashin, Yael. 2002. *Faces of the State: Secularism and Public Life in Turkey*. Princeton: Princeton University Press.

Özbudun, Ergun. 1993. 'State Elites and Democratic Political Culture in Turkey'. *Political Culture and Democracy in Developing Countries* Ed. Larry Diamond. Colorado: Lynne Rienner Publishers. 189-210.

Özkaya Lasalle, Eylem K. 2016. 'Radikal Sol Örgütlerde Şehitliğin İnşası'. *Öl Dediler Öldüm: Türkiye'de Şehitlik Mitleri*. Ed. Serdar M. Değirmencioğlu. İstanbul: İletişim Yayınevi. 291-329.

Özyürek, Esra. 2006. *Nostalgia for the Modern: State Secularism and Everyday Politics in Turkey*. Durham and London: Duke University Press.

Parker, Andrew and Eve Kosofsky Sedgwick. 1995. 'Introduction'. *Performativity and Performance* New York: Routledge. 1-18.

Puar, Jasbir K. 2017. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham and London: Duke University Press.

Reinhard Hess, Michael. 2007. 'Alevi Martyr Figures'. *Turcica* 39: 253-290.

Rose, Jacqueline. 1996. *States of Fantasy*. New York: Oxford University Press.

Ross, Alf. 1961. 'On the Concepts "State" and "State Organs" in Constitutional Law'. *Scandinavian Studies in Law* 5: 111-130.

Sancar, Mithat. 1997. "'Devlet akli", hukuk devleti ve "devlet çetesi"'. *Birikim* 93/94: 80-90.

Sarat, Austin. 2001. 'Situating Law Between the Realities of Violence and the Claims of Justice' *Law, Violence, and the Possibilities of Justice*. New Jersey: Princeton University Press.

Schmitt, Carl. 1988. *The Crisis of Parliamentary Democracy*. Cambridge: MIT Press.

Schmitt, Carl. 1996 (1938). *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*. London: Greenwood Press.

Schmitt, Carl. 2007. *The Concept of the Political*. London: University of Chicago Press.

Sedwick, Eve Kosofsky. 2003. *Touching Feeling: Affect, Pedagogy, Performativity*. Durham: Duke University Press.

Sharma, Aradhana and Akhil Gupta. 2006. 'Introduction' *The Anthropology of the State: A Reader*. Oxford: Blackwell Publishing.

Sharpe, Christina. 2016. *In the Wake: On Blackness and Being*. Durham and London: Duke University Press.

Sheikh, Shela. 2013. "'I am the martyr (x)" Philosophical Reflections of Testimony and Martyrdom". *PhD Thesis*. Goldsmiths, University of London.

Sherman, Claire Richter. 1995. *Imagining Aristotle: Verbal and Visual Representation in Fourteenth-Century France*. Berkeley: University of California Press.

Sirman, Nükhet. 2016. 'When Antigone Is a Man'. *Vulnerability in Resistance*. Eds. Judith Butler, Zeynep Gambetti and Leticia Sabsay. Durham and London: Duke University Press. 191-210.

Skinner, Quentin. 2018. *From Humanism to Hobbes: Studies in Rhetoric and Politics*. Cambridge: Cambridge University Press.

Sorel, George. 1999. *Reflections on Violence*. Cambridge: Cambridge University Press.

Sophocles. 1994 (1962). *Antigone, Oedipus the King, and Electra*. Eds. Edith Hall, Trans. H.D.F. Kitto. Oxford: Oxford University Press.

Söderbäck, Fanny. 2010. *Feminist Readings of Antigone*. New York: SUNY Press.

Taussig, Michael. 1992. *The Nervous System*. New York and London: Routledge.

Tuğal, Cihan. 2013. "Resistance everywhere": The Gezi revolt in global perspective'. *New Perspectives on Turkey*. 49: 147-162.

Vamik D. Volkan and Normal Itzkowitz. 2007 (1984). *The Immortal Atatürk: A Psychobiography*. Chicago: University of Chicago Press.

Vismann, Cornelia. 2008. *Files: Law and Media Technology*. California: Stanford University Press.

Yıldız, Ceylan Begüm. 2020. 'A State in Anomie: An Analysis of Modern Turkey's States of Exception'. *States of Exception: Law, History, Theory*. Eds. Cosmin Sebastian Cercel, Gian-Giacomo Fusco and Simon Lavis, London: Routledge. 167-183.

Zencirci, Gizem. 2014. 'Civil Society's History: New Constructions of Ottoman Heritage by the Justice and Development Party in Turkey'. *European Journal of Turkish Studies* 19: 1-20.

Žižek, Slavoj. 2008 (1989). *The Sublime Object of Ideology*. London and New York: Verso.

### **Legal Documents**

Berkin Elvan Indictment: Republic of Turkey, Istanbul Office of the Chief Public Prosecutor, Investigation no: 2013/155787, Case no: 2016/42124, Indictment no: 2016/4484.

Berkin Elvan Verdict: Republic of Turkey, Istanbul, 17. High Criminal Court, Case no: 2016/325, Verdict no: 2021/189.

Expert Report 2020: 'Ek Bilirkişi Raporu' 2020. Jandarma Genel Komutanlığı, 24 January. Document no: 2016.325.

The Constitutional Court Application 2019: Gamze Elvan and others, Application no: 2015/5718, Decision date: 9/05/2019.

The Constitutional Court Application 2020: Sami Elvan, Application no: 2017/15640, Decision date: 13/02/2020.

Istanbul Gendarmerie Criminal Lab Report 2018: 'Uzmanlık Raporu' 2018. Istanbul Jandarma Kriminal Laboratuvar Amirliđi, 4 April. Document no: 2018/585025.

Prosecution of Civil Servants and other Public Officers Act: Memurlar ve Diđer Kamu Görevlilerinin Yargılanması Hakkında Kanun, no.4483, 2 December 1999.

Penal Code of Turkey. 2016. Trans. European Commission for Democracy Through Law (Venice Commission). 15 February. Strasbourg.

Turkish Penal Code: Türk Ceza Kanunu, no:5237, 26 September 2004.

Turkish Penal Code: Türk Ceza Kanunu, no: 765, 1 March 1926.

### News Articles

'Berkin Elvan: Turkish PM Accuses Dead Boy of Terror Links'. 2014. *BBC*, 15 March. Accessed 28 September 2021. <https://www.bbc.co.uk/news/world-europe-26594922>

'Berkin'in Annesinden Bingöl'e: Sen de Yuhalayacak mıydın?' 2014. *Ege'den Son Söz*, 3 December. Accessed 28 September 2021. <http://www.egedesonsoz.com/haber/berkin-in-annesinden-bingol-e-sen-de-yuhalayacak-miydin/884951>

Dearden, Lizzie and Kashmira Gander. 2015. 'Turkish Hostage Situation: Prosecutor Mehmet Selim Kiraz and 'DHKP-C militants' Who Held Him Hostage Die'. *Independent*. 31 March. Accessed 28 September 2021. <https://www.independent.co.uk/news/world/europe/turkish-prosecutor-mehmet-selim-kiraz-held-hostage-by-armed-militants-over-protest-death-10146286.html>

'Erdoğan Links Dead Turkish Teenager to 'Terrorist' Groups'. 2014. *Reuters*, 15 March. Accessed 28 September 2021. <https://www.reuters.com/article/us-turkey-protests-idUSBREA2E0A820140315?rpc=401>

'Erdoğan Makes Crowd Boo Berkin Elvan's Family'. 2014. *Al-Monitor*, 16 March. Accessed 28 September 2021. <https://www.al-monitor.com/pulse/originals/2014/03/Erdoğan-terrorist-elvan-crowd-incitement-elections.html>.

'Erdoğan says Turkish Teenager Killed in Protests was a Terrorist'. 2014. *Haaretz*, 15 March. Accessed 28 September 2021. <https://www.haaretz.com/Erdoğan-links-dead-teenager-to-terrorist-groups-1.5334197>

'Gülsüm Elvan: Yeter Artık Biz Kardeşçe Yaşamak İstiyoruz'. 2020. *Bianet*, 23 September. Accessed 28 September 2021. <http://bianet.org/bianet/insan-haklari/231422-gulsum-elvan-yeter-artik-biz-kardesce-yasamak-istiyoruz>

Hakan, Ahmet. 2014. 'Bütün Yönleriyle Yavuz Bingöl Olayı'. *Hürriyet*, 5 December. Accessed 28 September 2021. <https://www.hurriyet.com.tr/yazarlar/ahmet-hakan/bütün-yonleriyle-yavuz-bingol-olayi-27711761>

Krajeski, Jenna. 2014. 'Turkey's Erdoğan Retains Working-Class Roots'. *Al Jazeera*, 28 March. Accessed 28 September 2021. <https://www.aljazeera.com/indepth/features/2014/03/turkey-pm-retains-working-class-roots-2014327113735373532.html>

Kural, Beyza. 2017. 'Berkin Elvan Davası: Mahkeme Sanık Polisin Tutuklanma Talebini Reddetti.' *Bianet*, 6 April. Accessed 28 September 2021. <https://bianet.org/bianet/hukuk/185185-berkin-elvan-davasi-mahkeme-sanik-polisin-tutuklanma-talebini-reddetti>

'Leaked Tapes Prompt Calls for Turkish PM to Resign'. 2014. *The Guardian*, 25 February. Accessed 28 September 2021. <https://www.theguardian.com/world/2014/feb/25/leaked-tapes-calls-Erdoğan-resign-turkish-pm>

Mosendz, Polly. 2015. 'Turkey Accuses Twitter, YouTube of 'Spreading Terrorist Propaganda''. *Newsweek*, 6 April. Accessed 28 September 2021. <https://www.newsweek.com/turkey-accuses-twitter-youtube-spreading-terrorist-propaganda-320003>

'Non-Pecuniary Damages for Police Attack at Funeral of Berkin Elvan'. 2019. *Bianet*, 10 December. Accessed 28 September 2021. <https://bianet.org/english/law/216901-non-pecuniary-damages-for-police-attack-at-funeral-of-berkin-elvan>

Önder, Engin. 2018. 'Global Justice: The Man from Kasımpaşa' *Boston Review*, 11 January. Accessed 28 September 2021. <http://bostonreview.net/politics-global-justice/engin-onder-man-Kasımpaşa>

'Profile: Recep Tayyip Erdoğan' 2018. *Aljazeera*, 25 June. Accessed 28 September 2021. <https://www.aljazeera.com/indepth/spotlight/turkeyelection/2011/05/2011526121054590355.html>

'Turkish Military Leaders Held for Role in '97 Coup'. 2012. *The New York Times*, 12 April. Accessed 28 September 2021. <https://www.nytimes.com/2012/04/13/world/middleeast/turkey-detains-military-leaders-for-role-in-1997-coup.html>.

'Turkish PM Says Tapes of Talk with Son a Fabrication'. 2014. *Reuters*, 25 February. Accessed 28 September 2021. <https://www.reuters.com/article/us-turkey-Erdoğan/turkish-pm-says-tapes-of-talk-with-son-a-fabrication-idUSBREA1N1ZX20140225>.

'Unutulmasın diye...Berkin İçin Nerede Ne Demişti?'. 2015. *BirGün*, 16 June. Accessed 28 September 2021. <https://www.birgun.net/haber/unutulmasin-diye-berkin-icin-nerede-ne-demisti-82892>

'Yeni Ek Bilirkişi Raporunda Sanık Polis Asli Kusurlu Berkin Elvan Tali Kusurlu'. 2020. *A3 Haber*, 3 February. Accessed 28 September 2021. <https://www.a3haber.com/2020/02/03/yeni-ek-bilirkisi-raporunda-sanik-polis-asli-kusurlu-berkin-elvan-tali-kusurlu/>

Yonucu, Deniz. 2014. 'Okmeydanı Üzerine Notlar (1)'. *Evrensel*, 1 June. Accessed 28 September 2021. <https://www.evrensel.net/haber/85437/okmeydani-uzerine-notlar-1>

## Website Content and Clips

Amnesty International. 2013. 'Gezi Protests: The Brutal Denial of Right to Peaceful Assembly'. 2 October. Accessed 28 September 2021. <https://www.amnesty.org/en/documents/EUR44/022/2013/en/>

Amnesty International UK. 2014. 'Turkey: Gezi Park Protests On (sic) Year On – Police Remain Unpunished, Demonstrators Go on Trial'. *Press Release*. 9 June. Accessed 28 September 2021. <https://www.amnesty.org.uk/press-releases/turkey-gezi-park-protests-year-police-remain-unpunished-demonstrators-go-trial>

Anadolu Agency 2016. 'Savcı Kiraz'ın Şehit Edildiği Ana İlişkin Operasyonun Görüntüleri' *YouTube video*, 0:31, 28 March. Accessed 28 September 2021. <https://www.youtube.com/watch?v=ODnfoCUCTUg>

BBC News Türkçe. 2015. 'Öldürülen Savcı Mehmet Selim Kiraz için Tören - BBC TÜRKÇE'. *YouTube video*, 1:30, 1 April. Accessed 28 September 2021. <https://www.youtube.com/watch?v=11iP9tCHuUM>

'Berkin Elvan Davası' n.d. *Faili Belli*. Accessed 28 September 2021. <https://www.failibelli.org/dava/berkin-elvan-davasi/>

'Berkin Elvan'ın Cenazesine Saldırı "Kasten Adam Öldürmeye Teşebbüs"tür". 2014. *Halkevleri*, 14 March. Accessed 28 September 2021. <http://www.halkevleri.org.tr/basin-aciklamalari/berkin-elvanin-cenazesine-saldiri-kasten-adam-oldurmeye-tesebbustur>

Çaycı, Korhan. 2015. 'Berkin'in Babası Eylemcilerle Canlı Yayında – Çağlayan Adliyesi – Savcı Mehmet Selim Kiraz – DHKP-C' *YouTube video*, 19:20, 31 March. Accessed 28 September 2021. <https://www.youtube.com/watch?v=2LsW-MERJFs>

Doğru Tarih. 2017. 'Sonra Ne Oldu - Şehit Savcı Selim Kiraz - 11 Şubat 2017'. *YouTube video*, 45:09, 11 February. Accessed 28 September 2021. <https://www.youtube.com/watch?v=vTY5-nJFu8&t=189s>

Parti Mitingleri. 2014. 'Başbakan Recep Tayyip Erdoğan Ak Parti Gaziantep Mitingi' *YouTube video*, 1:04:30, 14 March. Accessed 28 September 2021. <https://www.youtube.com/watch?v=qAKzFThXo-w>

Sol Haber. (@solhaberportali). "DHKC'lilerin İkinci Ses Kaydı Yayınlandı". Twitter, 31 March 2015, 1:49 p.m. Accessed 28 September 2021. <https://twitter.com/solhaberportali/status/582887470095826945>

Yıldırım, Umut, and Yael Navaro-Yashin. 2013. 'An Impromptu Uprising: Ethnographic Reflections on the Gezi Park Protests in Turkey'. *Hot Spots, Fieldsights*, 31 October. Accessed 28 September 2021. <https://culanth.org/fieldsights/series/an-impromptu-uprising-ethnographic-reflections-on-the-gezi-park-protests-in-turkey>

Yılmaz, Berna and Yakşi, Çiğdem. 2017. *Biz de Sizi Seviyoruz!* İstanbul: Boran Yayınları. Accessed 28 September 2021. <https://halkinsesitv1.org/boran-yayinlarindan-yeni-kitap-biz-de-sizi-seviyoruz/>

ZfL Berlin. 2021. "Julia Ng: Benjamin on Law" *YouTube video*, 33:43, 9 July. Accessed 28 September 2021. [https://www.youtube.com/watch?v=DnGaTvvJU-Q&list=PLRwXH9t33XB4-69pnvx8i\\_Ykmv2ZY9Nu1](https://www.youtube.com/watch?v=DnGaTvvJU-Q&list=PLRwXH9t33XB4-69pnvx8i_Ykmv2ZY9Nu1)

Žižek, Slavoj. 2013. 'Trouble in Paradise' *London Review of Books* 35(14). Accessed 28 September 2021. <https://www.lrb.co.uk/the-paper/v35/n14/slavoj-zizek/trouble-in-paradise>