

INDEPENDENT REGULATORY AGENCIES:
THE WORLD EXPERIENCE AND THE TURKISH CASE

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
MIDDLE EAST TECHNICAL UNIVERSITY

BY

ÜMİT SÖNMEZ

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF MASTER OF SCIENCE
IN
POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

SEPTEMBER 2004

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ABSTRACT

INDEPENDENT REGULATORY AGENCIES: THE WORLD EXPERIENCE AND THE TURKISH CASE

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September 2004, 228 pages

The thesis explores the nature and characteristics of the independent regulatory agencies, which become a crucial component of the current administrative structures, as well as the possible sources and dynamics behind their emergence. The study begins with investigating in what way the methodological premises of the theories of public choice, new public management, and governance affected the formation, functioning and justification of these agencies and makes an inquiry into the connection between them and the neo-liberal policies implemented since the 1980s. It then focuses on the independent regulatory agencies in the Turkish case and examines the impact of the economic and political conditions in the neo-liberal period in the emergence of these agencies. The thesis seeks to explain the peculiarity of the emergence of IRAs in Turkey, as compared to their American and European counterparts, with special reference to the process of European Integration and to the pressures exerted by the international financial agencies within the context of economic crisis. As geared to the achievement of these objectives, a critical assessment of the debates on independent regulatory agencies in the literature has been made within the scope of the study.

Keywords: Independent Regulatory Agencies, Neo-liberalism, Public Choice, New Public Management, Governance.

ÖZ

BAĞIMSIZ DÜZENLEYİCİ KURUMLAR: DÜNYA DENEYİMİ VE TÜRKİYE ÖRNEĞİ

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Yüksek Lisans, Siyaset Bilimi ve Kamu Yönetimi Bölümü

Tez Yöneticisi: Doç. Dr. Yılmaz Üstüner

Eylül 2004, 228 sayfa

Bu tez, günümüzde idari yapının önemli bileşenlerinden biri olarak ortaya çıkan bağımsız düzenleyici kurumların yapısını, ortaya çıkışlarının ardındaki olası dinamikleri ve nedenleri araştırmayı hedeflemektedir. Çalışma, öncelikle kamu seçimi kuramı, yeni kamu işletmeciliği hareketi, yönetim paradigması gibi yaklaşımların yöntemsel öncüllerinin bu kurumların oluşumu, işleyiş mantığı ve meşrulaştırılmasındaki rolünü incelemekte; 1980 sonrası dönemde uygulanan neoliberal politikalarla bu kurumlar arasında nasıl bir bağ olduğunu araştırmaktadır. Daha sonra Türkiye’deki bağımsız düzenleyici kurumlara odaklanarak Türkiye’nin neoliberal dönemdeki ekonomik ve politik koşullarının bu kurumların oluşturulmasındaki etkisini mercek altına almaktadır. Tez, Türkiye’de bu kurumların ortaya çıkışının özgül koşullarını, Avrupa ve Amerika’daki benzerlerinden farklı olarak, Avrupa Birliği’ne uyum süreci ve ekonomik kriz ortamında uluslararası finans kurumlarının baskısının önemine vurgu yaparak açıklamaya çalışmaktadır. Bu hedeflere yönelik olarak, çalışma kapsamında bağımsız düzenleyici kurumlar üzerine olan literatürdeki tartışmaların eleştirel bir değerlendirmesi de yapılmıştır.

Anahtar Sözcükler: Bağımsız Düzenleyici Kurumlar, Neoliberalizm, Kamu Seçimi Kuramı, Yeni Kamu İşletmeciliği, Yönetişim.

To the memory of my brother

İSMET SÖNMEZ

*“koş çocuk koş, güzel yarınlar bizi beklemekte
ama sakın sonbahar güneşine yakalanma...”*

ACKNOWLEDGMENTS

I wish to thank and express my deep gratitude to my supervisor, Assoc. Prof. Dr. Yılmaz Üstüner, for his guidance, advice, criticism, encouragements and insight throughout my studies. Without his tolerance and support everything could have been harder for me.

I also would like to record my indebtedness and thanks to my other examining committee members for their overall contributions. Grateful thanks are addressed to Prof. Dr. Şinasi Aksoy, for the close interest, persistent support, inspiration, and guidance he has provided in my academic life and for his constructive criticisms and insightful comments which has contributed a lot in completion of this thesis. In addition, I am greatly thankful to Assist. Prof. Dr. Ahmet Alpay Dikmen for his clarifying suggestions and invaluable comments on this thesis.

I would like to extend my thanks to Mehmet Ağaoğlu, Halime Şenli, Hayati Bora and Mustafa Tuğlu for giving me strength and an endless support. Their precious friendship and helps restored my belief for the existence of ‘good people’ and a livable better world.

My acknowledgments would indeed be incomplete if I did not record my heartfelt debts to Ayşe Şimşek, who has always shared the vicissitudes of my life and stood by me with her endless love and support.

I also feel seriously obliged to express my appreciation to my dear friends and colleagues, Burak Özçetin, Engin Akyürek, Başak Alpan, Bengi Demirci, M. Ruhi Demiray and İhsan Kamalak, who were always with me and provided a warm and kind working environment. It is indeed, rare gift and luck to meet such wonderful people in academia and to feel their constant support, love and ‘real’ friendship.

I owe a great debt to a special friend, Demet Dinler who was always with me in my ‘hard times’. She read the final version of the text and spent a great effort to revise it. Without her emotional and technical assistance it would be impossible for me to see the light at the end of the tunnel. She restored my belief in reliable friendship and provided support in all aspects of life, ‘not only in rhetoric, but also in practice’.

My deepest indebtedness is to my family for their everlasting tolerance, persistent support and strong faith in me. Without their love and encouragement, none of this would have been possible. My only wish is to deserve their unlimited trust in and support for, everything I have chosen to do.

Finally, I would like to express my gratitude to the person to whom this thesis is dedicated, my late brother. On behalf of my family and myself, I want to say to him: “Thank you for still being with us in every moment of our daily lives.”

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CHAPTER 1

INTRODUCTION

The emergence of independent regulatory agencies (IRAs) is not a new phenomenon. They have already come into being in the late 19th century to regulate some free market sectors in the United States, yet their re-emergence in the 1980s is drastically different from the previous century in terms of their historical context and the basic rationale underlying the intentions of the policy-makers in designing them in all over the world and in a very wide range of sectors. This new context in which the IRAs are designed and established is neo-liberalism which brought about market reforms, globalization, deregulation, privatization and liberalization and which made it necessary for institutional reforms to enable these reforms.

With respect to their definition, functions, authorities, organizational properties, locus in the state apparatus, IRAs exhibit many different features from the previous administrative units and in that sense they have very peculiar characteristics of their own. They have extraordinary rights in terms of regulation, rule-making, policy-making, control and sanction within their domains, making them often almost the sole regulating authority in their defined sectors. Moreover they are organizationally separated from the government and the traditional bureaucratic structures and their members are not directly elected officials. Such an extraordinary degree of independence, at least *de jure*, provokes many questions which are worth investigating: How can these agencies be located within different legal and administrative structures in different countries? How can they claim for legitimacy if they are deprived from the control by the representatives of the people? Does their

existence and operation create problems of accountability? Although these questions constituted the core of the debates about IRAs in the last decade, IRAs have proven to be the *sine qua non* authorities in the regulation of liberalized markets in many countries and played a crucial role in the transformation of the political, social and administrative structures, especially with regards to the marketization of the public sector.

Behind the motivation of this study resides, therefore, the increasing need to systematically analyze this rather new phenomenon of IRAs, not by taking their existence as for-granted, but by questioning how and why these agencies came into being within the neo-liberal context. The study aims at deciphering the potential sources for the emergence of IRAs, by making a critical evaluation of the existing explanations in the literature and by deriving insights for an alternative framework. In order to achieve that objective, this study investigates the economic and political problems faced up in the 1970s and the global changes which effected countries across the world in the 1980s and locates IRAs within that context.

Chapter 2 explores the possibility of a general definition of IRAs, despite the fact that there is not a general model of these agencies in the world and they vary according to the historically specific political, economic and administrative systems of different countries and the fact that there are other organizations which perform similar functions as IRAs do. After the setting of the minimum requirements and criteria for defining an IRA, a first set of explanations in the emergence of IRAs will be discussed, namely the functional and contextual reasons. While the former will be discussed with reference to the principal-agent approach, the latter will be explained with regards to the cross-national and cross-domain variations in the delegation of authority to IRAs.

Chapter 3 is based on a detailed analysis of the public choice theory and its relevance for discussing the theoretical roots behind the emergence of IRAs, because public choice approach, sometimes called as “the economics of politics”, played an important role in the development of those arguments which reinforced and

supported the establishment of IRAs, such as the “governmental failure” (against the argument of “market failure”), rejection of state interventionism, loss of trust to politicians and promotion of free market economy. Within the scope of the chapter, constitutional economics, which emerged as a sub-discipline of the public choice will also be discussed.

Chapter 4 is devoted to a critical review of the approach of the new public management and its possible impacts on the development of the IRAs. New Public Management (NPM) is a very complex approach whose basic tenets are inspired from public choice theory, managerialism, “reinventing the government” approach and other theories of public administration and even if it can not be considered as a coherent theory, many of its theoretical premises are being used to justify the necessity of IRAs. Therefore a critical assessment of its concepts which have a direct relevance for the IRAs such as competition, performance-measurement, outcome-orientation, customer-based service, is necessary, which is the objective of Chapter 4.

The contributions of the governance approach to the organizational model and rationale of IRAs constitute the focus of Chapter 5. After a review of the multi-dimensional aspects of the approach, a special emphasis will be made on the concept of “good governance”, introduced by the World Bank (WB) and which implies the necessity to transform the public sectors in compliance with neo-liberal tenets. Hence, basic themes of governance approach such as political liberalization, administrative decentralization, downsizing of bureaucracy, managerial administrative systems and market-friendly state whose basic organs are considered to be IRAs will be emphasized. The chapter will also deal with the repercussions of the model of decision-making as envisaged by the governance approach on the functioning of the IRAs as well.

By deriving methodological insights from the previous chapters, Chapter 6 will analyze the Turkish case of IRAs. Since Turkish experience with IRAs is very new and Turkey’s administrative, legal and state structures are unfamiliar to IRAs, the chapter will first attempt to reveal difficulties and problems that were faced

concerning their legal definition, locus in the existing structures and their degree of independence. Then it will proceed with investigating the determining factors in the emergence of IRAs in Turkey. It will pose a series of question in order to tackle with this issue: In what way did the international agencies such as the WB, International Monetary Fund (IMF), European Union (EU), Organization for Economic Co-Operation and Development (OECD) on the one hand and crisis conditions on the other hand influence the establishment of IRAs in Turkey? Did Turkish case of IRAs exhibit differences as compared with the American and European experiences with IRAs? Were the theoretical discussions for justifying IRAs as put in Chapter 2, 3, 4 and 5 relevant for the Turkish case?

These discussions will be made with specific reference to those IRAs regulating the market. These are, namely, the Capital Market Board (CMB) (Sermaye Piyasası Kurulu), the Competition Agency (CA) (Rekabet Kurumu), the Banking Regulation and Supervision Agency (BRSA) (Bankacılık Düzenleme ve Denetleme Kurumu), the Telecommunications Agency (TA) (Telekomünikasyon Kurumu), the Energy Market Regulation Agency (EMRA) (Enerji Piyasası Düzenleme Kurumu), the Sugar Agency (SA) (Şeker Kurumu), the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA) (Tütün, Tütün Mamülleri ve Alkollü İçkiler Piyasası Düzenleme Kurumu), the Public Procurement Agency (PA) (Kamu İhale Kurumu). The Higher Board of Radio and Television (HBRT) (Radyo ve Televizyon Üst Kurulu) will also be added to this list, given that it is the first IRA established in Turkey. The establishment of these agencies will be located in a broader context since the 1980s, in the context of the economic market reforms and will be discussed with the earlier failure or reluctance of the policy-makers to implement institutional reforms.

In the final chapter, Chapter 7, some concluding remarks concerning the theoretical arguments which supported the establishment of IRAs, the political, administrative and economic reasons behind their emergence, the existing and potential implications of their existence, the problems associated with their operation (in terms of

accountability, legitimacy and effectiveness) will be made. These remarks will again be related to the wider context of neo-liberalism in the last two decades.

It is important to note that the thesis does not aim at making an exhaustive analysis of IRAs; rather its goal is to systematize the discussion on IRAs, which is a relatively new topic, by examining its sources, methodological roots and historical background, in order to pave the way for and encourage more detailed, comprehensive and multi-faceted future examinations of IRAs, which should be supported by cross-country analyses based on a comparative perspective.

CHAPTER 2

THE EMERGENCE AND THE SPREAD OF INDEPENDENT REGULATORY AGENCIES

2.1. THE DEFINITION OF INDEPENDENT REGULATORY AGENCIES

Independent regulatory agencies (IRAs) cannot be severed from the broader social, economic and political reforms that have been implemented in the 1980s and 1990s. The emergence of them was one of the key developments of this era. Insulated from direct democratic control in many countries, these agencies have proliferated, spreading both across new domains and in countries which had none or few of them, and become crucial actors in public policy making. Their institutional designs, powers delegated to them, controls imposed on them, and their relative status in administrative systems of countries are complex and have raised endless debates of democratic legitimacy and accountability. Therefore, it is important to initiate the discussion on IRAs with a clarification of its definition.

It is a difficult task to make a general definition of the IRAs, this is mainly because their institutional designs, authorized functions, relative statuses as well as powers delegated to them and controls imposed on them vary in different countries, and even in different domains within the same country. In his study on IRAs in Western Europe, Thatcher (2002: 126-29) asserted that IRAs could be classified into two broad groups: Agencies regulating the operation of markets within the tenets of the market theory and agencies making regulations for protecting public interest. The regulatory power of the former derives from the need to prevent 'unfair competition', enforce licenses and sometimes control prices. In some cases, they may exert control

over ‘social’ or distributional aspects of markets, for instance to ensure universal service or to protect specified groups. Among such agencies, utility regulators, general competition authorities and financial bodies can be cited. The latter, on the other hand, are responsible for promoting ‘public interest’ goals outside competition. Their tasks include the setting standards, issuing licenses, prohibiting unauthorized supply and providing information in a very wide range of spheres like environment, safety (at work or of food) and racial and gender equality. According to Thatcher, cross-domain comparison shows that market regulation agencies have spread more widely than public interest regulators and they enjoy more power and independence from governments, as opposed to public interest regulators.

There are many agencies in different states performing similar functions as IRAs, but most of them do not meet the minimum requirements for being counted as an IRA, for an IRA is not only defined with regards to the function it fulfills. In this study, an IRA is exclusively defined as an agency having its own powers and responsibilities under public law; whose organizational structure is separated from ministries and whose members are neither directly elected by people nor managed by elected officials. If these are the minimum requirements that an agency should meet in order to be counted as an IRA, then those agencies which are organized as units of ministries, organic organs of government or within the bureaucracy should be excluded from the analysis of IRAs, because they are exercising state power under the direct control of ministers and the civil service. Moreover, their powers and institutional designs are not independent from the government. Nevertheless, those agencies that may be linked to a ministry in certain formal ways (as in Britain) are included within IRAs as long as they are not constituted merely as departments or administrative offices of a larger bureaucratic entity.

The observation that an agency is formally meeting the criteria of being an IRA does not guarantee that it actually performs independently from the elected officials. Therefore, whether the autonomy of an IRA from their elected officials and from regulatees is guaranteed in practice or not should be considered separately under the conditions of delegation in each country. This question, then, is contingent upon the empirical conditions of different countries. In fact, there are cross-national and cross-

domain variations in powers delegated to regulatory agencies, in controls imposed on them, in their institutional arrangements and in the degree and type of autonomy and independence. Furthermore, each country has its own legal doctrines and definitions about IRAs. As a result, these regulatory agencies are called with different names in different countries such as ‘autonomous regulatory agencies’, ‘semi-independent regulators’, ‘independent regulatory agencies’, ‘impartial regulatory agencies’ and the like. However, throughout the study of these agencies which satisfy the minimum requirements of being an IRA, as put clearly and specifically above, will be called as an ‘independent regulatory agency (IRA)’.

2.2. THE EMERGENCE OF INDEPENDENT REGULATORY AGENCIES

In order to reveal and identify the specified emergence of the IRAs in the context of 1980s and 1990s, it would be useful to locate them in a historical context; such a contextualization shows that the appearance of independent regulatory agencies should be traced back to the 19th century. The homeland of regulatory agencies is the United States. The Interstate Commerce Commission (ICC) founded by the decision of The Congress as an independent commission from the executive in 1887, is known as the first example of independent regulatory agencies. The main reason behind its establishment was the increasing complaints about the service and prices of railway transportation provided by private firms. In the beginning; the Interstate Commerce Commission was regulating the railway transportation between states; later it became responsible with the regulation of oil transportation (1906), highway transportation (1935) and water transportation (1940) as well. The Federal Trade Commission was established in 1914 to provide competition. In the establishment law of the Federal Trade Commission, many powers (including making rules and regulations, allowing licenses, judicial authorities in solving disagreements, giving sanctions such as imposing fines in the case of illegal activities and the like) were given to this commission under the heading of ‘protecting public interest’. Following these initial cases, in time, the number of federal regulatory commissions proliferated in the United States, and today there are about hundred independent regulatory

agencies.¹ After the Great Depression in 1929, the number and functions of regulatory agencies had increased in the United States, but their importance as a policy choice had decreased after the 2nd World War. Yet, by the 1970s and especially in the 1980s the numbers, significance and powers of these agencies would increase, not only in the United States, but in many other countries as well.

Many reasons can be explored for the emergence of independent regulatory agencies in the United States in the late 19th century. One reason was the federal system of America, which necessitated the constitution of federal regulatory commissions to function as credible institutions especially with respect to economic issues in all over the country. Secondly, as a result of the 'checks and balance' system between the Congress and the Presidency, the Congress aimed at limiting the authority of the President by creating independent regulatory agencies. Thirdly, these institutions were considered to be crucial for the functioning of a liberal competitive market economy. Fourthly, the market failures, especially the monopolization and arbitrary applications against consumers (poor service and high prices) in privatized sectors played a role in the emergence of independent regulatory agencies as institutions to correct these failures.

Until the 1980s, there emerged a few (Britain and Germany) or no independent regulatory agency in countries other than the United States. After the Great Depression, many countries preferred to apply direct state intervention, but the United States, despite the increased state intervention, continued to rely on independent regulatory agencies in general. Therefore, it was surprising to observe how independent regulatory agencies proliferated and spread in European and other countries by the beginning of the 1980s. Though, independent regulatory agencies can be claimed as old institutions from a historical perspective, there are many new reasons for their diffusion and domination in the last two decades. In fact, their structure and functions were renewed and they emerged as indispensable institutions of global economy and the neo-liberal economic system for different countries

¹ For a complete list, see: <http://www.whitehouse.gov/government/independent-agencies.html>

having different political regimes and administrative systems. Thus, it is in the context of global economic, political and social changes that one should locate these new institutions. These changes can be summarized as the integration of many countries with the global market, liberalization of trade and finance, privatization of state assets and public services and the need for standardization of market and competition rules in all over the world.

However, the question still remains how the reasons and factors (both theoretical and contextual) behind the emergence of IRAs are explained by different approaches in this new era of globalization and neo-liberalism. This second chapter, therefore, is devoted to a critical assessment of the functional reasons in explaining the delegation of authority to the IRAs as well as the contextual factors which played a role in the creation of different IRAs in different countries and/or even in different domains within the same country. Other reasons to explain the emergence and the role of IRAs elaborated within the framework of other methodological approaches such as public choice theory, new public management (NPM), and governance will constitute the main axes of discussion in the following chapters.

2.3. THE REASONS OF DELEGATION OF AUTHORITY TO INDEPENDENT REGULATORY AGENCIES

The emergence of IRAs is a matter of delegation of authority from legislature to these agencies. In this context, legislative bodies delegate some authority to IRAs on policy-making and decision-making in diverse public policy areas. Among many possible causes behind this delegation, two will be explored firstly, namely, functional and contextual reasons. Functional reasons will be discussed with respect to the principal-agent theory from a critical outlook to point out the deficiencies of a functional approach in explaining the whole rationale of delegation to IRAs. Contextual factors will be cited as indispensable to grasp a broader, integrated picture of the reality of IRAs.

2.3.1. THE FUNCTIONAL APPROACH ON THE RATIONALE OF DELEGATION OF AUTHORITY TO INDEPENDENT REGULATORY AGENCIES

According to principal-agent theory, the basic rationale for delegation of authority from a principal to an agent is functionalist, whether it is from shareholders to management, states to international organizations, or legislatures to regulatory agencies. This is done because delegation is anticipated to produce better outcomes in the long-run (Pollack, 1997). Principal-agent approach assumes that elected officials delegate some of their powers to IRAs on making public policy, because they calculate the benefits and costs of delegation and assume the benefits outweigh the costs. Delegation is done because it is accepted that agencies can perform functions useful for them to deal with pressures and problems. As a result, the creation and the design of IRAs are seen only as a matter of institutional choice: Elected officials (principals) delegate authority to IRAs (agents) and they choose the formal institutional form (notably the powers delegated and controls imposed) that minimizes ‘agency losses’ arising from ‘shirking’ or ‘slippage’.

2.3.1.1. THE PRINCIPAL-AGENT APPROACH

The principal-agent approach emerged to analyze the dynamic of delegation of authority from a principal to an agent. The principal and the agent enter into a contractual arrangement, in which the principal chooses to delegate certain functions, in the expectation that the agent will act in ways that produce outcomes desired by the principal. Any type of delegation between different actors (voters to legislature, shareholders of a firm to managers, politicians to bureaucrats, politicians to independent regulatory agencies) can be the topic of principal-agent approach.

It is important to note that delegation involves both the benefits and the costs for the delegating party (Tallberg, 2002: 25). The disadvantages of delegation are called as ‘agency costs’ or ‘agency losses’, which arise from setting up of agents to take decisions on behalf of the principal, the construction of mechanisms to control agents

to minimize agency losses, and the negative effects of agents straying beyond their mandates which may be termed as (Thatcher, 2002: 130) ‘shirking’ (divergence of preferences of the agent and its principal) and ‘slippage’ (institutional design causing the agents’ decisions to differ from those desired by the principals). The benefits of delegation may change according to the wishes of delegating principal. As an example, for elected politicians, the benefits of delegation may be the reduction of political transaction costs by providing solutions to collective-action problems that prevent efficient political exchange.

The early traces of principal-agent approach can be found in the work of Berle and Means (1932), in which these authors examined the process of delegation at firm level. They have observed how the corporate shareholders contract the control out to the management, and how the separation of ownership from control led to an interest in the effects of delegation. Thus, they found out how different institutional arrangements can structure more efficient outcomes. After Berle and Means, Stephen Ross has been the first author to give way to the emergence of principal-agent theory, because he described the relationship between the principal and the agent as “between two (or more) parties when one, designated as the agent, acts for, on behalf of, or as a representative for the other, designated the principal, in a particular domain of decision problems” (Ross, 1973: 134).

The principal agent theory developed out of the observation that contracting partners often deal with different information. Principals delegate authority to agents, so that agents can make decisions and take actions independent of the explicit approval of the principal. The principal can realize the benefits of the delegation only by granting discretion to the agent, because the agent may have to act in situations which are too complex and which necessitate high technical or specialized knowledge. On the other hand, principals know that agents are likely to develop their own interests in decision making processes and that these interests may conflict with those of the principals. The preferences of agents that are different from the aims of principals and the self-seeking behaviors of agents are called as “agency loss” (Epstein and O’Halloran, 1999: 24). The principal can reduce agency losses by creating the necessary control

and monitoring mechanisms with regards to the institutional design, powers and actions of the agent. The main objective is to delegate just the amount of power necessary to enable agents to achieve desired outcomes with minimal agency losses. Thus, the main focus of the principal-agent theory resides in the design of the optimal contract that could ensure the minimal agency losses, given the assumption of asymmetrically distributed information.

Kiewiet and McCubbins (1991) argued that delegation enables agents to solve problems for principals. Principal agent approach goes hand in hand with the ‘rational choice theory’ and the ‘transaction costs approach’, in the sense that it serves as an analytical tool to understand the transaction costs in the relationship between a principal and a contracting agent. According to the rational choice theory, the reasons for delegation are simply functional and the principal agent framework is used to prove the functional reasons behind the delegation of authority from principals to agents. Delegation is useful for a principal if the expected benefits of delegation outweigh its costs. The rational choice theory assumes that the actors are able to rationally calculate the costs and benefits of their actions and make their preferences/choices according to these calculations.

It can be concluded that, in general, principal agent models analyze the relationship between principals and agents, the reasons of delegation, examine the necessary amount of discretion that must be given to an agent, and as well as the necessary control mechanisms to restrict an agent by a principal in order to realize the expected benefits from delegation.

2.3.1.2. THE FUNCTIONAL REASONS FOR DELEGATION OF AUTHORITY TO INDEPENDENT REGULATORY AGENCIES

The basic tenets of the principal agent model, as put above, enable to examine the functional reasons behind the delegation of authority to IRAs. Within the scope of the study, principals are those elected officials (governments, legislature) who use

their authority to establish IRAs through a public act of delegation, while agents are those IRAs who govern by exercising delegated powers.

Seen through the lenses of the principal agent model, 1980s and 1990s are characterized, by a set of pressures and problems faced up by governments and legislative bodies. Some of these problems and pressures are depicted as: the need for sophisticated technical knowledge in policy-making, the unpopularity of neo-liberal policies which aimed at dismantling the welfare state and the rights associated with it, lack of confidence by different actors in politics and traditional bureaucracy with regards to efficient and successful policy-making and the changes brought about by increased supranational regulation as a result of globalization and market integration. Majone (1999) asserts that elected officials delegate authority to IRAs, because IRAs can perform useful functions to assist governments in responding to such pressures and in coping with such problems. Within this context, it is possible to classify the functionalist explanations to the emergence and spread of IRAs in the 1980s and 1990s by following and adapting Thatcher's analysis (2002):

- a) Elected officials made policy choices that they believed were necessary but would turn out to be unpopular. IRAs allowed them to shift the blame for unpopular decisions and policy failures and delegate responsibility. IRAs would bear the consequences of the decisions, and thus they would enable politicians to avoid electoral punishments. For instance, agencies regulating competition provided a buffer between the government and the groups who would be affected by the policy choices.

Thus, for instance, in the utilities, recently privatized incumbents often increased prices, especially for domestic users who had been cross-subsidized by large, commercial ones; regulators responsible for regulating such firms could take part of the blame for tariff increases. A similar rationale applies to general competition regulation, where takeovers and mergers involved losers as well as winners, the former often including employees who lost their jobs after successful bids. (Thatcher, 2002: 131)

- b) Regulation has become a much more technical issue in the 1980s and 1990s.

Liberalization of markets increased the technical requirements of regulation. In the utilities, regulators had to grapple with the costs and terms of interconnection among networks, standard setting, and preventing abuses of dominant position. New issues that emerged onto the regulatory agenda were frequently complex and involved very high levels of scientific expertise. (Thatcher, 2002: 131-2)

Civil servants and ministers ran the risk of miscalculating or not fully grasping the serious consequences of their policy choices. Thus, IRAs would provide an expertise regulation with high technical capability thanks to its institutional form and the personnel including economists, lawyers, scientists, experts from private sector and etc.

- c) Increased complexity in policy making within a global world order made it difficult for elected politicians to take beneficial regulatory decisions in favor of their voters. Even issues that were more directly relevant to voters became increasingly linked to arcane matters that were incomprehensible to non-specialists. The lack of necessary information capability to evaluate complex changes made decision making process more difficult for politicians and traditional bureaucrats. For instance, price controls became enmeshed in questions of costs and tariff baskets, but such matters were far from being exciting for ministers. Moreover, complexity of policy issues made it more difficult for ministers and legislators to participate effectively in decision making. As a solution to these problems, delegation to agencies of ‘impartial’ technical policy making and implementation became more attractive to elected politicians (and their generalist civil servants). IRAs might develop and employ policy relevant expertise, reduce information asymmetries and costs, and enhance the efficiency of rule making and policy implementation.

- d) IRAs offered governments and legislatures a means to make credible commitments. This function was particularly relevant in those countries with long histories of unpredictable intervention by elected politicians. In these countries, the utilities have been subject to inconstant activity by governments for short-term and non-economic objectives. Therefore, almost all privatizations should be accompanied by the creation of IRAs, so that governments could make more credible commitments to investors and hence boost their revenues from the sales of state assets (Levy and Spiller, 1996). IRAs were also been used for making credible commitments *vis-à-vis* citizens and consumers. For instance, crises in financial sector and scandals in different areas such as food and environmental safety followed in many countries by the establishment of independent agencies in order to restore the trust in government or self-regulation.
- e) Greater regulation by international organizations created another impetus for delegation to IRAs. For instance, European Commission (EC) regulation has to be transposed and implemented by member states, and has accounted for a high proportion of national regulation (Majone, 1996a). International organizations as International Monetary Fund (IMF), the World Bank (WB) have imposed effective pressures, especially on debtor developing countries to make structural reforms in regulation. These international organizations' decisions can impose heavy costs on society; they can be controversial to public interest or they can bring about drastic changes which may conflict with societal anticipations and state traditions. Hence, politicians may hesitate to implement such unpopular reforms which may, on the other hand, be considered as urgent requirements by the international agencies. The fact that IRAs are not directly accountable to people enables them to implement these reforms in such a way that international policy requirements are met without political costs on the part of politicians. Hence, it can be deduced that IRAs also served as a responsible interlocutor for international organizations and global capital floating around the world.

- f) Finally, IRAs are accepted as an alternative to central bureaucratic structures, because the functioning of IRAs depends on a flexible, managerial, transparent, and outcome-focused public administration understanding, which is seen as a solution to the general complaints rose against traditional bureaucracies which are accused of red-tape, rigidity and incapacity. The popular discourse that the bureaucratic failures of European Commission (EC) would be defeated by creation of IRAs within the administrative system of European Union illustrates and supports this argument.

Following this line of argumentation, it is claimed that international pressures and regulation have reduced the capacity of governments to pursue traditional regulatory policies. As a result, elected officials (or policy makers in general) decided to delegate authority and benefit from the functional advantages of delegation. They have created IRAs or other bodies that did not posses delegated powers and independence in comparison to IRAs. According to Thatcher (2002: 134) the latter choice has been used in domains such as social and environmental policy in general, but the first choice was widespread in the regulation of markets. The reason was that, especially after privatization, liberalization and globalization, pressures on elected officials were particularly strong in those domains. The regulatory agencies were weaker in fields other than markets, such as environment, race relations, gender equality and the like. Therefore, many countries' governments preferred to create consultative bodies in ministries and delegated fewer powers to these agencies than to market regulators.²

² For cross-national studies in key domains, see: Majone (1996a); Giraudi and Righettini (2001); Doern and Wilks (1996); Coen and Thatcher (2000).

2.3.2. THE DEFICIENCIES OF FUNCTIONALIST EXPLANATIONS FOR DELEGATION OF AUTHORITY TO INDEPENDENT REGULATORY AGENCIES

Although the functionalist explanations for delegation of authority to IRAs constitute a viable framework for the analysis of the study, they are not sufficient to give a comprehensive explanation of all the patterns of emergence and spread of IRAs. Many questions still remain about the delegation to IRAs, and they cannot be answered by simple functional explanations (Thatcher, 2002). Many of the pressures for change and advantages of delegation as depicted by the functionalist explanations were long-standing and already existent, but they had not led to substantial delegation to IRAs before the 1980s and 1990s. There were scandals, lack of credibility and unpopularity of policies in domains such as utilities policies or financial regulation in several countries, but the timing of agency creation has varied in different countries, even in different domains within the same country. Powerful functional pressures led to delegation in some countries but not in others in the same or similar areas. Even in the face of similar powerful pressures, governments exhibited variations in their institutional choices. The comparison of the institutional features of delegation also reveals the limitations of focusing solely on the functions performed by agencies. IRAs enjoy differing organizational positions, ranging from being non-governmental departments (the utility regulators in Britain) to being legally independent (the Italian Competition Authority). Furthermore, within the same issue domain, there are cross-national differences, despite the presence of similar reasons for delegation such as the need for credible commitment and the requirement of international regulation. In fact, at times, cross-national findings run counter to certain functional pressures. Thus, although France and Italy faced more significant problems of credible commitment than Britain and Germany, given their traditions of political intervention and instability, they have delegated fewer powers to their sectoral regulators and have created more controls, notably over nominations and reporting, in the hands of elected officials. The numbers of regulators within IRAs and their selection procedure have taken many forms; so that one cannot talk

about a single universal model. Cross-domain comparison equally suggests that functional advantages are able to explain only some of the patterns of delegation to IRAs. In certain cases, similar institutional forms were used within countries across domains with very different characteristics.

Finally, it would be misleading to associate one single institutional form with a policy choice. In fact, several of the functional pressures on elected officials could have been responded to through institutional reforms other than delegation to IRAs. For instance, governments could have chosen to strengthening government departments to deal with technical complexity, or greater use of constitutional entrenchment to increase the credibility of their commitments.

2.3.3. THE CONTEXTUAL FACTORS IN DELEGATION OF AUTHORITY TO INDEPENDENT REGULATORY AGENCIES

Cross-national and cross-domain variations in delegation of authority to IRAs have proven that functional advantages of delegation could not be the only reason for the creation of IRAs. According to Thatcher (2002), IRAs should not only be considered as a response to external pressures or with regards to their functional advantages but should also be located within their context. Contextual factors would have a better explanatory power to account for the patterns of delegation found across different countries and different domains. Thatcher argues that there are four important contextual factors that may aid to explain the differences in the spread of IRAs, the timing of their creation and the various institutional forms they take: Policy learning and isomorphism, state traditions and structures in regulation, political leadership and the broader institutional context of states. Adapted from his work (2002), the following classification of the contextual factors could be made:

- a) Policy Learning and Institutional Isomorphism: DiMaggio and Powell (1991) asserted that policy learning and institutional mimetism were important in the spread of IRAs. Within countries, ‘snowball’ effects meant that once an apparently successful model of an agency existed, it was copied into other

domains. Copying took place despite considerable contrasts between the features of different sectors. National patterns of delegation emerged, especially in agency design. The idea that agencies spread after a powerful example can explain cross-national variations in timing of IRAs as well. Cross-national learning and isomorphism were also important in certain domains, especially highly internationalized sectors such as telecommunications, banking, energy and the like. It is possible to add a 'coercive isomorphism' idea to this analysis, because for many countries, especially for the developing ones, to create IRAs in different areas was enforced by international organizations and multi-national corporate institutions as a necessity for market integration and a well-functioning economy. DiMaggio and Powell (1991) define coercive isomorphism as the diffusion of institutional forms and practices through legal obligation backed up by monitoring and enforcement mechanisms. Such an isomorphic process played an important role in the spread of delegation to IRAs. For instance, Maastricht Treaty insisted on independent central banks as a precondition for entry into a single currency in the European Community (Radaelli, 2000). It should be also remembered that the reform propositions made by some effective international organizations contributed to institutional isomorphism, such as the 'good governance' approach of the World Bank in the 1990s initiated by its report of *Sub-Saharan Africa from Crisis to Sustainable Growth* (WB, 1989). DiMaggio and Powell (1991) call this process as 'normative isomorphism'.

- b) State Traditions and Structures: State traditions and existing state structures are very effective in determination of delegation to agencies. Countries that had close affinity with delegation procedures approved the establishment of IRAs easier than other countries which had little or no tradition of independent agencies and the process of delegation. Britain had regulatory commissions dated from the nineteenth century, for example in the railways (Foster, 1992). In contrast, Italy and France had little tradition or experience of independent agencies. So, it was relatively easier to establish IRAs in

Britain, while Italy and France decided to establish them only after observing successful cases in other countries.

Since the institutional design of delegation to IRAs was dominated by different state structures and traditions in different countries, the variations by country and domain can be best explained by referring to variations in structures and traditions of different states. For instance, those countries which have experienced a long-standing direct parliamentary regime and which favored an extensive intervention utility services in general prefer to give the authority of nomination to IRAs, to the legislature rather than to the executive. Moreover, important control mechanisms on agencies were given to legislature in these countries such as France and Italy. On the other hand, in some other countries where legislature has no absolute power over the executive, executive bears important control mechanisms over regulatory agencies. For example, in Britain, parliament has almost no powers over the nomination or activities of the IRAs; the ministers bear all the authority about them. The conclusion that can be derived from this historical analysis is that the constitutional and legal obstacles in different states shape differently the structure and functions of IRAs.

- c) Political Leadership: The decision of establishing IRAs and giving controlling power to such independent agencies insulated from direct democratic control is not an easy decision for politicians. Therefore, a strong political leadership is an essential requirement in the establishment of IRAs. Thus, countries with strong political leadership, the decision of delegation to IRAs and responding to the emergent pressures and problems was easier than countries without such a tradition. Weak governments such as unstable coalitions as in Italy could not meet the need of delegation, as strong governments such as single party governments in Britain did.

Political leadership also influences the choice of agency form. In a country with majoritarian political systems and few constitutional veto powers, such

as Britain, single-person agencies nominated by the executive were established. In contrast, in countries with multi-party systems and multiple veto sources (for instance, between heads of governments and presidents, or between the two legislative chambers), the form of IRAs were constituted on the basis of representation of many parties and state actors. This shows how constitutional rules defined the frameworks of delegation in most countries, because they put the rules of the electoral systems, determined the authorities of different actors of state and the like.

- d) State Reforms: In order to understand the emergence of IRAs and the cross-national and cross-domain differentiations between them, they must be analyzed in the broader context of reforms of state structures as well. Many specific developments have been influential on state reforms after 1980s such as the movements of globalization, privatization and liberalization, and new public management reforms. The establishment of IRAs in many countries followed these reform movements. For instance, Pollitt and Bouckaert (2000) asserted that the greater the spread of new public management doctrines, the more independent regulatory agencies were created. The relationship between new public management paradigm and the emergence of IRAs will be elaborated in detail in chapter 4.

2.3.4. AN ASSESSMENT ON THE FUNCTIONAL AND THE CONTEXTUAL FACTORS OF DELEGATION OF AUTHORITY TO INDEPENDENT REGULATORY AGENCIES

Within the scope of the 2nd chapter, the probable functional and contextual factors behind the emergence of IRAs were analyzed. In studying the probable functional reasons of the establishment of IRAs, the arguments of the principal-agent theory provided a good framework. Depending on the inadequacy of functional factors in explaining the cross-country and cross-domain variations between IRAs and the timing of their creation, the probable contextual factors were elaborated in detail

which would provide a more comprehensive framework in the analysis of emergence and spread of IRAs.

The principal-agent approach analyzes how elected officials can choose proper institutional design of delegation, notably by deciding which powers to delegate to an agency and which controls to impose on it in order to minimize agency losses. The issues of 'slippage' and 'shirking' are two examples of agency losses for principal-agent models, but there are many other unanticipated consequences of delegation to IRAs beyond the insights of principal-agent approach. These consequences cannot be understood by the sole institutional explanations, but rather the taking into account of contextual factors and a broader analysis of some other dimensions.

It would be naive to think that politicians have voluntarily passed their powers to unelected IRAs. Principal-agent framework provides a good starting point to examine the dimensions of delegation to IRAs, but functional demands are not sufficient to grasp all the reasons of delegation and would be insufficient at all. The emergence of IRAs is justified as a response to pressures to stabilize national markets for investors, while enabling the state to respond more effectively to increased technical complexity. IRAs are also presented as vital organizations for making credible commitment with respect to the well-functioning of markets. Likewise, majoritarian politics is accused of high inflation so that independent central banks are assumed to guarantee low inflation and price stability. Moreover, IRAs are seen as instruments to reassure business and financial interests and considered as pragmatic servants for politicians to be declared as scapegoats for unpopular public policies as well. These functional explanations are relevant, but there are opposite examples as well. For instance, McNamara (2002) asserts that independent central banks are not necessary responses to the demands of credible commitment, because they do not always produce lower inflation and higher growth. Similarly, majoritarian politics does not always lead to higher rates of inflation. She shows that independent central banks were introduced in Western Europe in an era of very low inflation. Likewise, Wilks and Bartle (2002) argue that the creation of competition authorities in Britain

was initially symbolic and that politicians have never believed in the importance of IRAs.

Cross-national and cross-domain variations in IRAs and differences between the timing of delegation to IRAs in different countries do also support the inadequacy of functional the explanations. Such variations between different countries awake really a hard question that could not be answered easily from a functionalist perspective. For instance, Germany established at least a semi-independent central bank and a national competition authority in the 1950s, but other countries did not do the same until the 1980s and 1990s (Thatcher and Stone Sweet, 2002). Moreover, Germany has created an independent regulatory authority in the issue of competition, but did not establish a similar agency in other domains.

Another crucial point indicating the inadequacy of functional explanations is that most of the functional reasons encountered to explain the emergence of IRAs also existed in the past, but no one considered responding to them by establishment of IRAs. For instance, problem of credibility, unpopular policy choices or issues necessitating technical experience and complexity existed well before the 1980s, but none of these problems are tackled with the creation of independent regulatory organs. Moreover, there have been policy alternatives other than the establishment of IRAs for politicians to solve such problems, but they were not preferred. For instance, politicians could choose among a set of options and prefer to govern through other statutory, administrative and judicial means, rather than resorting to the delegation of authority to IRAs.

Delegation of authority to IRAs should be a hard choice for politicians. If they decide to delegate, they must ensure that their interests be best served by this delegation, as compared to the existing situation or to an alternative institutional arrangement. Authors such as McNamara, Thatcher, and Wilks and Bartle benefited from methods and ideas of ‘historical’ and ‘sociological’ institutionalism as an alternative to the principal-agent framework to explain how preferences and interests of politicians have changed in the 1980s and 1990s to create IRAs. According to these authors,

pressures were exerted on governments by powerful interests such as bankers and business to create IRAs, because such interests needed a more predictable and less politicized environment, which they believed, could be best provided by IRAs. Politicians also started to think that their interests in low inflation could be better served by an independent central bank. In other fields such as general competition policy or sectoral regulation, elected officials, confronted by scandals, technical complexity and international pressures, together with new ideas and examples of reform, concluded that having direct control over policy, or at least appearing to have it, was no longer advantageous. The probable sociological and historical explanations about the creation of IRAs and the reasons of such an institutional preference of politicians should be extended.

Finally, the functional and contextual factors which are elaborated throughout this chapter provided good and explanatory framework about the rise of IRAs in many countries after the 1980s. The functional factors are emphasized to explain why politicians would delegate their authority to IRAs taking into consideration the probable benefits of delegation and pressures exerted onto politicians. Nevertheless, functional factors remained insufficient to explain all the reasons, sources and dynamics of emergence and spread of IRAs in a specific era. In addition, contextual factors such as policy learning and isomorphism, state traditions and structures, political conditions and dynamics in a country, and the reform movements sourced from internal and/or external factors were analyzed to clarify the cross-national, cross-domain and timing variations between IRAs. Although the contextual factors presented an illustrative outline about how institutional structure, organizational characteristics, functions, and powers of IRAs are being shaped differently in each country, many other factors and dynamics may have implications on the emergence and proliferation of the IRAs as well. States and societies live in an integrated system and they continuously interact with each other and with other states and societies. Within this interactive process; all the political, economic, social and administrative structures, mechanisms and developments influence each other. Depending on this assumption, some other further theoretical and concrete developments of the 1980s and 1990s influential on the rise of IRAs should be elaborated.

In this context, the reasons, sources, dynamics and consequences of emergence and spread of IRAs in 1980s and 1990s are studied by taking into account the specific developments of these eras, especially by concentrating on the theories and practices of public choice, new public management and governance in the following chapters of 3, 4, and 5.

CHAPTER 3

PUBLIC CHOICE THEORY AND INDEPENDENT REGULATORY AGENCIES

3.1. PUBLIC CHOICE THEORY

3.1.1. THE EMERGENCE AND THE CONTENT OF PUBLIC CHOICE THEORY

Public choice theory emerged as a rival approach to a variety of interventionist economic theories such as welfare economics, Keynesianism and the early ‘development economics’ which were setting the agenda for the debate on the role of the state within the post-war period. These interventionist theories identified a horde of ‘market failures’ and argued that active state involvement in economy was necessary in order to correct these failures (Chang, 2002). As a result of the crisis of welfare states in the 1970s, public choice theory became popular with its ‘public sector failure’ approach, which was reversing the ‘market failure’ approach of the previous interventionist theories.

Public choice theory was developed after the 2nd World War but took the attention of scholars only within the 1970s. The theoretical backbone of the public choice theory was constituted by the writings of Downs (1957), Buchanan and Tullock (1962), Riker (1962), Olson (1965), and Niskanen (1971). Within the words of Buchanan (1984: 11), public choice is a new sub discipline that falls halfway between economics and political science and has been turning around the way of thinking of many scholars. Public choice can be defined as the economic study of non-market decision-making, or simply the application of economics to political science. Its subject matter is the same as that of political science: the theory of state, voting rules,

voting behavior, party politics, and bureaucracy and the like. However, the methodology employed by public choice is that of economics. The basic behavioral postulate of public choice is that man is an egoistic, rational utility maximizer (Mueller, 1976: 395). Public choice theorists employ methodological individualism as their basic ontological premise. They seek to explain political, economical and social phenomena such as increase in government intervention, excessive welfare expenditures, bureaucratic rigidities, and problems of collective decision making processes by aggregating the behavior of individuals. According to Buchanan;

In one sense, all of public choice or the economic theory of politics may be summarized as the ‘discovery’ or ‘rediscovery’ that people should be treated as rational utility maximizers in all of their behavioral capacities. (Buchanan and *et al*, 1978: 17; cited in Green, 1987: 92)

In line with their methodological individualistic premises, the basic units of public choice analysis are choosing, acting, behaving individuals rather than the organizational units. They make no difference between the individuals in the market sector and the individuals in the political sector. Tullock (1976) prefers to analyze government as an apparatus, just like the market, in which actors try to achieve their private ends. Public choice theory assumes that all individuals in government serve their own interests within certain institutional limits. Therefore, it is not relevant to think that government actors seek public interest because they are simply working at government office.

According to the analysis of voting behavior, the majority of voters support politicians who will serve for their own interests, redistribute wealth and increase public expenditures. Public choice theorists see most of the voters as ‘free-riders’ who are benefiting from excessive government expenditures by selling their votes. In order to be re-elected, politicians transfer wealth to constituents under the justification of common interest arguments. This is an important factor in increasing intervention of state to economy. Politicians do not only respond to voter demands, but they also strive after their own interests as well. According to Downs (1957),

politicians concentrate on their own interests, which are power, income, and prestige resulting from their positions. In order to reap these benefits, it is necessary to be re-elected and politicians can do anything so as to be re-elected.

As far as the analysis of bureaucracy is concerned, the most effective hypothesis belongs to Niskanen (1971) who argued that bureaucrats would do anything to maximize their budgets. This hypothesis strongly contrasts with the traditional view of a docile and subservient bureaucracy, which was stimulated by the work of Max Weber. Niskanen derived his hypothesis from the assumption of self-interested bureaucrats and the nature of the environment in which they operate. The lack of information to monitor bureaucrats' performance in their specialized activities, the lack of cost-benefit analysis about their expenditures, the monopolistic character of goods and services they provide, their advantage of specialization as compared to the short stay of politicians at office provide them with necessary grounds to pursue their own interests. These interests cover a wide variety of monetary and non-monetary items (such as salary, power, perquisites of the office, reputation, output and an easy life), but in Niskanen's view, most of them are related to the size of the budget appropriated for them by the politicians.

Public choice theory has adopted an 'instrumentalist' attitude about the theory of state. It asserts that state is an instrument for politicians, majority of voters, bureaucrats and the interest groups in order to realize their self-interests. Buchanan and Tullock (1962) focused their attention explicitly on the nature of the state, viewing government as nothing more than a set of processes, a machine, which allows some individuals to set their individual interests as the collective interest of all society. Public choice theory tried to develop a positive approach about the theory of state. It observed the behaviors of governmental actors and voters in decision making processes and explained all public policy issues and the theory of political science empirically within the confines of their observations. In classical economics, economists, in general, are not very much interested in how political decisions are made. They emphasize the self-functioning of economy and make interpretations about the proper role of the state. They generally ask 'what the governments should

do?’ (normative approach). But, instead of asking ‘what political institutions or political organizations should do’, Buchanan asked ‘how these institutions or organizations are working’ (positive approach). Then, instead of making comparisons between normative models or “romantic models” as Buchanan calls them, public choice theorists tried to compare functioning models. They essentially took the tools and methods of economic theory and applied them to the political or governmental sector, to politics, to bureaucracy, and the public economy. As with economic theory this analysis attempts to relate the behavior of individual actors in the governmental sector, that is, the behavior of persons in their various capacities as voters, as candidates for office, as elected representatives, as leaders or members of political parties, as bureaucrats (all of these are ‘public choice’ roles) to the complex public policy outcomes that might be observed empirically. In that sense, public choice theory aims at offering an understanding, an explanation, of the complex institutional interactions that go on between the self-seeking voters, politicians, bureaucrats and the interest groups within the governmental sector.

3.1.2. THE BASIC TENETS OF PUBLIC CHOICE THEORY

Public choice theory played an important role in the change of attitudes towards politicians, bureaucrats and governments. It increased the distrust towards traditional political institutions and heavily criticized democratic electoral process, especially the majority rule principle. It analyzed the rent-seeking behaviors of self-seeking voters, politicians, bureaucrats and the interest groups as the main cause of government growth, the inefficient and ineffective public policy outcomes. Public choice presented its findings under the name of a ‘theory of governmental failure’ that is fully comparable to the ‘theory of market failure’ that emerged from the theoretical welfare economics of the 1930s and 1940s. In that earlier effort, the system of private market was shown to ‘fail’ in certain respects when tested against the idealized criteria for efficiency in resource allocation and distribution. In the latter effort, government or political organization was shown by the public choice theory to ‘fail’ in certain respects when tested for the satisfaction of the idealized criteria of efficiency and equity.

Public choice theory favors a competitive free market economy and rejects any state intervention because of the problems in collective decision making processes. It is generally accepted as an integrated part of neo-liberal economics, which emerged in the 1980s with its assumptions against welfare economics. The theoretical background of neo-liberal economics was composed of monetarism, supply-side economics and rational choice economics. These theories, in general, favored a self-regulating economy and tried to show the defects of state intervention to the market with the tools and principles of economics. In order to support these economic theories, public choice theory tried to show the defects of collective decision making process, defined government as composed of self-seeking politicians and bureaucrats pursuing their own interests which they disguised under the vision of public interest. Therefore, public choice theory claimed to unmask the real face of the state evil that is intervening to the economy. It put the concept of ‘governmental failure’ against ‘market failure’ and supported the anti-Keynesian policy prescriptions of monetarism, rational choice and supply-side economics. According to Mueller (1989), the observation of individuals and the individualist method of public choice theory allowed it to show how politics and bureaucracy fail. Public choice theory questioned public expenditures and endorsed those policies which eliminated the instruments of intervention to market, which were used by politicians and traditional bureaucrats.

Self (1993) talks about the emergence of a new paradigm called as “government by the market” in the 1980s. This paradigm holds that governments should do less; that they should reduce or relinquish their previous responsibilities of maintaining full employment and protecting a comprehensive system of state welfare; that they should privatize public services wherever practicable; and that they should reform their own operations in accordance with market concepts of competition and efficiency. These beliefs in ‘government by the market’ rest upon propositions that the market system is inherently a better method for satisfying human desires and aspirations than the government is, and that the political process is subject to numerous imperfections and distortions. The intellectual basis for this new doctrine

came from market theory and public choice perspective, because while market theory celebrates or defends the virtues of competitive markets, public choice concentrates upon the problems and limitations of the democratic political process. By dealing specifically with issues of politics and political failure, it provides a critically important collaboration to the advocacy of market theory. The first objective of this new paradigm has been to slim the state and to liberate market forces in a variety of ways, such as deregulation and by using monetary and fiscal policy. The second objective has been to import market concepts and incentives into the operations of the government itself.

Public choice theory has contributions to make with regards to both the nature and justification of these goals (slimming state, privatization and restructuring government) and the possible political strategies for achieving them (Self, 1993: 59). Slimming state entails measures to reduce the relative size and growth of public expenditure and to cut down the range of functions that government performs. Public choice theory assumes that a slimmer state is bound to be also a more impartial one.

Privatization is seen as a very important means for both slimming the state and increasing the competitive influence of market forces within government. It may require the wholesale transfer of functions and assets to the private sector or it may involve contracting out the provision of public services. Privatization may be pursued for pragmatic, tactical or systemic purposes, although the reasons often overlap. A pragmatic approach is concerned only with the relative efficiency of public or private service delivery in achieving given ends. This is the usual, traditional approach of economists and administrators. A tactical approach uses privatization to pursue specific political and economic goals such as pleasing the party faithful or raising funds quickly to reduce a budget deficit. A systemic approach aims at making a 'regime change' which will shift the whole system towards a market economy and away from reliance upon government (Henig *et al.*, 1988; Feigenbaum and Henig, 1992; cited in Self, 1993). The neo-liberal ideology utilizes the pragmatic reasons for privatization but inclines towards a 'systemic' belief in the intrinsic superiority of the private provision. Orzechowski (1977) even

tried to prove that production costs in the public sector are higher than they would be in the private sector with his empirical researches. From a similar perspective, public choice theory assumes that all the functions that can be fulfilled or all the goods and services that can be produced by the private sector should be given to private capital. Moreover, it considers the expansionist character of the political market, fuelled by the self-interest of organized groups and bureaucrats and by their coalitions with politicians, as a serious threat to individual freedom, and thus favors privatization and liberalization of markets.

Another basic objective of the public choice theory is to ‘empower consumers’ by giving them a wider choice of services. The intention is to stimulate competition and to reduce the power of bureaucrats to act as ‘gate keepers’, controlling the allocation of services in a paternalistic or authoritarian manner. Then, public providers would no longer have a monopolistic position, but would have to compete for clients with each other and preferably with private providers as well (Ostrom, 1973). According to Ostrom, public choice theory can suggest the desirability of a decentralized political system. Just as competitive markets work ideally through satisfying a diverse range of consumer preferences, the political system should meet a diverse set of preferences for public services. Hence, decentralization and creating a competitive structure of local governments as in federal system would be approved by the public choice school.

Politicians’ lack of any long-run strategy, which often results in instability in macroeconomic policies, is another concern of the public choice scholars (Brennan and Buchanan, 1980). This complaint about politicians is due to the fact that public choice theory favors the maintenance of neo-liberal economics as the basic economy policy under any political authority and wants to avoid any change with respect to changing political authorities, which are unable to adopt a long-run term perspective.

It is possible to find out certain ways to keep politicians away from decision making process especially in economical issues. But there are limitations of legislative control over the discretionary powers of the bureaucracy as well. In fact, modern

government is too complex and many-sided. Discretionary power must be granted to the bureaucrats over a wide range of decision-making and the bureaucracy can manipulate the agenda for legislative action for the purpose of securing outcomes favorable to their own interests. At that point the principal agent theory would be an important tool to analyze the information costs and the problems of information asymmetry between the decision makers and executors, because it focuses on the problems that superiors have in monitoring the behavior of their subordinates and in creating incentives for subordinate behavior.³

Public choice theory also criticizes the traditional government models for their monopolistic structure. It considers electoral competition as a competition among prospective monopolists, all of whom are bidding for exclusive franchise, while the behavior of the successful bidder is characterized by the propensity to profit-maximization. According to Buchanan (1984: 19), governments should be viewed as “exploiters of the citizenry, rather than the means through which the citizenry secures for itself goods and services that can best be provided jointly or collectively.” As a result, competition and private sector values are appraised by public choice theorists and proposed to be transferred to public sector. Niskanen has concluded that:

All bureaucracies are too large. For given demand and cost conditions, both the budget and the output of a monopoly bureau may be up to twice that of a competitive industry facing the same conditions. (1973: 31).

Behind this suggestion, reside two reasons according to Niskanen (1973: 32): First, a government sponsor has available to it no priced alternatives: it must take it or leave it. Second, the budget scrutiny process is usually dominated by a specialized committee, which in turn is dominated by individuals with high interest in service expansion. One of the chief insights of the public choice theory is that there is no escape from private motivations. Under any arrangements and whatever the scope of government, private motives will guide conduct (Green, 1987: 107).

³ For details, see: Pratt and Zeckhauser (1985).

Public choice theorists made a number of reform proposals: Design of an economic constitution (constitutional safeguards against exploitation and intervention to economy) and establishment of a polycentric administrative system (in contrast to the monocentric system of welfare state, which, they assume, is a benevolent despot). The issues of 'economic constitution' will be discussed in detail in the forthcoming section, but as far as the polycentric administrative system is concerned, Gruening (2001: 7) indicated that in such a system, the provision and the production of services are separated and that private vendors and public vendors compete for production contracts. Thus, a polycentric system provides opportunities for citizens (as consumers) to make choices among goods and services, and to initiate 'user pay' principle in the public sector (Ostrom, 1973: 1977).

As can be understood, every component of public choice theory –the methodology, the basic assumptions, the recommendations- directly conflicts with classical and neoclassical economics. Vincent and Elinor Ostrom presented this as a new approach to public administration and found some supporters (Ostrom and Ostrom, 1971). It is obvious that public choice theory and the neo-liberal economics relied on the critique of neoclassical economics, welfare economics or development economics and they aimed to offer a remedy or an alternative for each deficiency of welfare economics, welfare state or welfare bureaucracy instead of proposing reforms to correct those deficiencies. Therefore, it is not unexpected that public choice theory opened the ways for alternative state theories, alternative theories of economics and alternative discussions of public administration. These new paradigms emerged after the 1980s in the literature of public administration and are elaborated in Chapter 4 and 5 with respect to their relative role in the emergence of, or in the internal administrative structure and functions of independent regulatory agencies (IRAs). Yet, it would not be mistaken to conclude for the public choice theory that it contributed to the development of IRAs by enhancing distrust towards politicians and traditional bureaucrats. Public choice theory supported also the privatization of public services and aimed at bringing market values into the public sector. Moreover, it catalyzed the spread of the new public management reforms.

3.2. CONSTITUTIONAL ECONOMICS APPROACH

Public choice authors are highly critical towards classical political theories. They made very serious objections to the representative democracy, the right of vote, democratic electoral systems that depend on majority vote, on the grounds that they are likely to create an expansionist state which, in turn, is seen as a threat to private property and economic rights of individuals. Therefore, some of the public choice authors offered a new theory of 'constitutional economics' which, just like the public choice theory, not a homogeneous approach. There are some important differences between them, but one may conclude that constitutional economics derives its basic premises and assumptions from public choice understanding. Some propositions of the constitutional economics are slightly different from public choice theory, but both of them serve the neo-liberal economics by advocating a competitive free market which functions on its own without any intervention of the state.

Buchanan is not only a pioneer of public choice school but also of constitutional economics approach. His book co-authored by Tullock, *The Calculus of Consent* (Buchanan and Tullock, 1962) can be seen as the starting point of constitutional economics understanding. Buchanan and Tullock mentioned for the first time that;

The attainment of consent is a costly process, however, and a recognition of this simple fact points directly toward an 'economic' theory of constitutions. (Buchanan and Tullock (1962:7))

According to constitutional economics, the democratic processes is composed of self-seeking voters, interest groups, politicians and bureaucrats and it rejects a conceptualization of the state as a benevolent despot working for the goodness of all society. It is very critical to democratic electoral processes depending on majority vote, and the supremacy of parliament as a guarantee of the legitimacy of the state.

Some authors criticized the public choice theory for focusing on choices between rules, on choices subject to rules that define any community's political institutions

and on the manner in which such institutions impact collective decision-making.⁴ Public choice theorists are interested in the resulting (public) choices within (constitutional) rules, but constitutional economics theorists are primarily interested in analyzing the process that leads to certain constitutional rules. Brennan and Buchanan (1980) argue that early public choice models put too much emphasis on the median-voter determining the actions of politicians. Those models would be almost entirely determined by the demand side, leading to a benign neglect of supply side. They argue that the discretionary powers of politicians would not be adequately restricted by the median voter (i.e. on the process level) but on the level of constitution. According to Buchanan (1997: 123), there must be a careful and categorical distinction between choices among rules (constitutional politics) and choices within rules (ordinary politics). This latter cannot balance the budget (authority to spend without taxing), so the proposal for a constitutional amendment for budget balance is aimed at changing the rule for the game of ordinary fiscal politics.

3.2.1. THE BASIC ASSUMPTIONS OF CONSTITUTIONAL ECONOMICS APPROACH

Constitutional economics rejects all welfare policies of redistribution, social equity and income equality. It discredits electoral voting and legislative processes, and claims that the majority of individuals create an interventionist state, which has the authority to redistribute wealth, violate individual freedom and property rights, increase public expenditures through public debts and increasing taxation on minority in order to satisfy the majority. According to this approach, elected politicians are not seen as protecting the rights of individuals, but are self-seeking individuals violating property rights, disregarding economic logic, multiplying rent-seeking costs and destroying wealth. These results in a constitutional failure and the constitution must be reformed. In fact, political markets function under the shadow of written or unwritten constitutions and are inevitably affected by them to a greater

⁴ For details, see: Rowley (1997).

or lesser degree. Therefore, constitutions can be used to restrict policy choices of legislature and can function as a mechanism to preserve good government in a rationally self-seeking legislative environment (Mueller, 1996).

In a context where, democracy is accepted as an indispensable regime, constitutional economics emerged with the aim of analyzing the rules of the game and re-organize them in order to protect the crucial superiorities of democracy and reform the degenerated aspects of democratic processes. The way of determining the rules of the game in democratic regimes, namely the relations between voters, politicians and bureaucrats is the ‘constitution’. However, the definitions about what the constitution is, varies in constitutional economics literature. In general, it is accepted that a constitution is a framework that defines the rules and institutions in which individuals live and interact with each other. Advocates of classical economics thought that democratic electoral methods can hold government activities under control, so to choose the best among alternative electoral systems would be the main concern of individuals about the constitution. On the other hand, neo-liberal economists such as Hayek (1960: 5) asserted that to see democratic methods sufficient to restrict political authorities is a “tragic failure” of this century. Parliaments strive to buy the support of self-seeking individuals and interest groups and are ready to give any compensation to gain the votes of majority. Therefore, constitutions depending on unanimity rule or at least qualified majority would avoid most of the arbitrary decisions of the parliaments. From such a perspective, constitutional economists decided to place the basic rules and principles of self-regulating competitive free market economy at the constitutional level, and aimed to guarantee the protection of market from the intervention of state. In such a framework, political authorities may change by elections, but they cannot use economic tools to redistribute wealth so that the supremacy of market values would remain intact.

According to constitutional economics, the political process is an apparatus of ‘rules of election’ in which individual choices are being turned into collective choices. Political decisions would be legitimate only if all the individuals are benefiting from

them. Therefore, the political decisions affecting all the individuals should be guaranteed by unanimity rule. This is similar to the Pareto Optimum in economics, which assumes that economy would be efficient if it is in equilibrium and there is nobody to gain a one point utility without the one point loss of someone else. Hence, representative democracy and majority voting are criticized, because they are seen as obstacles to the transformation of individual choices into collective decisions. Therefore, all economic decisions by government should be taken on the basis of the unanimity rule to achieve a so-called Pareto efficiency in society (Mueller, 1989). Of course, unanimity rule seems not be a realistic resolution, but the basic objective of constitutional economics is to institutionalize the neo-liberal economic premises and make them enduring through such a proposition. But, in real conditions, constitutional economics theorists decided to develop an alternative proposition close to unanimity rule and they have theorized the constitutional level as the institutionalization of the neo-liberal economics. As a matter of fact, they declared that parliamentary democracy is undemocratic, and that collective decision making processes and voting rights that are the outcomes of long-standing political struggles could be restricted. These assertions constitute some of the basic characteristics of neo-liberal state theory and open the way for an endless debate of the crisis of representative democracies and problems of accountability with respect to policy-making organs.

The new economic constitution that wants to be built is expected to restrict welfare expenditures, the authority of taxation, of printing money, of public utilities, and of borrowing. Not surprisingly, the basic premises of the neo-liberal economics such as monetarism, supply-side economics and rational choices economics will be the guiding articles of this new constitution and will find their repercussions in the principles of functioning of the economy and of the basic social, economic and political rights of individuals. Moreover, this constitution will enforce the application of a balanced budget, free trade, minimal state and a competitive market.

The major functions of the constitution are designed to restrict the political authorities about on economic and fiscal policy-making and to prevent the simple

majority to load a huge economic burden on all community; while the political rationale behind it is to make the neo-liberal economic principles as the dominant ideology of the states in the world. According to constitutional economics, any government which is not liberal or belonging to any other political ideology must obey the economic constitution, no matter what they promise to their constituents. Some authors define such a liberal understanding as “authoritarian liberalism” (Çağan, 1997: 130), where politicians become only technicians satisfying the basic needs of a neo-liberal economy based upon Pareto efficiency.

The reason to underline the main characteristics and propositions of constitutional economics approach is that it aimed at institutionalizing the neo-liberal doctrine in economic and political arena with the means of an ‘economic constitution’, which could only be changed by unanimity rule or qualified vote rate. However, this approach is unable to explain why people would accept such a constitution at the beginning and why politicians would not change it in any time. Moreover, its analysis neglected the realities of society such as diverse interests of people, so it was not applicable.

The basic contribution of constitutional economics approach to the emergence of IRAs was that it allowed to re-analyze of constitutional systems and led to the re-assertion of delegation theories within the legal systems. This situation pioneered the delegation of authority to non-majoritarian institutions⁵ such as IRAs. Moreover, it can also be argued that IRAs also were functional in achieving the aims of constitutional economics approach by excluding politicians and democratic electoral processes from public policy making, and by regulating and ensuring the proper functioning of markets within the principles of neo-liberal economics. The fact that IRAs are insulated from elected politicians and they provide a stable and long-term policy-making without being dependent on changing governments did also function as a remedy to one of the basic problems pointed by the constitutional economics.

⁵ ‘Non-majoritarian institution’ is a general concept which implies policy-making institutions that are neither directly elected by the people nor directly managed by elected officials. Independent regulatory agencies or supranational agencies such as the International Monetary Fund can be accounted as some examples of these institutions. For details, see: Tallberg (2002).

3.3. PUBLIC CHOICE THEORY AND INDEPENDENT REGULATORY AGENCIES: A GENERAL EVALUATION

The emergence of IRAs which were established in order to depoliticize economy and to avoid the arbitrary intervention of politicians to the market coincided with the gaining significance of a new paradigm in the context of globalization and neo-liberalism. According to this paradigm, the market functions with its own dynamics, but there may be some market failures also such as the emergence of monopolies. It is also argued that the state is inferior to the market and that; private entrepreneurship is always superior to public entrepreneurship in terms of efficiency and effectiveness. As a result, all the activities, which can be performed by the private sector, should be left to the private capital. The state should only provide law and order, and provide necessary monitoring and regulating functions for a well-functioning competitive market economy. This new paradigm proposes the integration of all national markets and supports a global market economy functioning on the principles of free market theory in which capital floats freely.

As a part of this new paradigm, IRAs are charged to provide the maintenance of competitive markets and to adjust national markets to the principles and requirements of a global market economy. They are organized as independent or at least autonomous from governments in different countries, and they are not directly accountable to the voters. In general, they are not responsible for public interest, but responsible for regulating the markets, on behalf of market actors, in accordance with neo-liberal economic principles and necessities. Of course, such a regulation is very distinctive from the regulatory function of welfare states, which comprised an intervention to economy for income equality, redistribution and social equity. Therefore, the emergence of IRAs may be seen as the seeds of a new state, which is called as the 'regulatory state'. Though, it is sometimes problematic to make generalizations, as already mentioned, because a lot of regulatory authorities emerged in different countries especially after the 1990s with very distinctive structures and functions, it is possible to claim that these authorities are never a turn-back to the Keynesian welfare state, but they mostly emerge as a reaction to the

welfare policies in order to institutionalize a globally integrated neo-liberal world market. The context of this new paradigm is shaped by neo-liberal idea and the public choice theory constitutes an important part of it, so there is a close relationship between IRAs, public choice theory and the neo-liberalism.

The theories of public choice and constitutional economics had an important role in the emergence of IRAs. In fact, the public choice theory is more than a simple paradigm shift. Its basic concern was to replace the welfare state and to create a new order in which a minimal state provides law and order and a self-regulation market functioning on its own. But, there were two important obstacles for such an aim: the real existence of market failures and the fact that most of the objectives such as discarding politicians, confronting public bureaucracy with all private and managerial tools, discarding majority of citizens out of policy making processes and expecting people, bureaucrats, politicians or interest groups were unrealistic. Apart from these obstacles, public choice theorists may point out to the benefits of regulatory regimes within the neo-liberal framework as well. Therefore, a re-regulation process must be seen a necessary second step of the movements of deregulation, liberalization of markets, globalization and the privatization of the 1980s.

Public choice theory and constitutional economics can be seen as a reaction against the traditional Keynesian view of an anonymous government automatically acting in favor of the general interest. In its microeconomic view of the government, public choice theory points out to the individual decision makers steering the collective decision making process to serve their own interests. Both theories then lead to a critical view of government policies and advocate (constitutional) rules to limit the discretionary power of governments. The policy implication is that economic policy should be drawn away from the daily operating level to the more important task of setting (medium term) policy rules and policy regimes. According to public choice theory, governments may reap short term electoral benefits by exploiting the political business cycle by discretionary policies that can destabilize and spoil the economy. Public choice scholars such as Brennan and Buchanan (1985: 76) suggest that the

political process is inevitably shortsighted, because individual voters and politicians have little personal stake in long-term outcomes. On the contrary, private owners are said to have a clear personal interest in the long-run management of their property. The electoral interest of politicians inclines them towards policies which produce quick popularity and postpone any consequent costs. Brennan and Buchanan (1980) asserted that in order to provide stability in macroeconomic policies, discretionary powers of politicians should be restricted on the level of constitutional rules. IRAs emerged with a likewise objective; they are given the authority to avoid the intervention of politicians to economy and provide a stable neo-liberal economy in a long-run perspective without any significant change in policy-making in spite of changing governments.

According to public choice theory, a basic problem about politicians is their desire to be re-elected and their authority to pursue any opportunist short-run economic policy to gain more votes. IRAs are justified on these assumptions about the behavior of politicians and they are presented as the guarantee of apolitical, credible and stable policies. Public choice theory emphasizes that politicians cannot be expected to stop being politician; they will continue to promote those policies which will ensure their re-election; no other way is possible. Public choice authors offer diverse solutions to the problems of welfare economics and political business cycles. According to Wagner (1984: 267), what can be altered is not the nature politicians, but of the monetary order within which politicians pursue their ends. The denationalization of money and the restoration of competition in banking and in the supply of money will not, of course, remove all sources of economic disorder, but a gigantic first step in the right direction will have been taken; they also summarize the starting point of a huge economic and structural reform process within the neo-liberal framework. Some other authors (Goodhart and Bhansali, 1970; Nordhaus, 1975; Lindbeck, 1975; MacRae, 1977; cited in Frey, 1978) offer suggestions of what should be done against political business cycles: the electoral periods should be lengthened; economic policy should be taken out of the hands of politicians and given to nonpartisan institutions; the base of political participation should be broadened in the direction of indicative planning; economists and citizens should adopt a more critical view towards inflation

and the electorate should vote strategically by communicating a preference for deflation to government and a higher value to this goal (compared to other goals) in the election year. As one can conclude, the creation of a new authority insulated from politics to define economic policy was one of the major propositions of public choice authors in 1970s. They have discussed many probable solutions, and IRAs emerged as an important and feasible option to solve the problems defined by them.

Constitutional economics theory does not trust politicians or bureaucrats about the proper application of neo-liberal economics and warn against the potential dangers of democratic electoral systems, which may lead elected governments to implement redistributive policies in favor of the majority and to load its burden on the minority. This theory endorses the idea of adopting neo-liberal economic principles as constitutional rules that can only be changed by unanimity rule or at least by qualified majority. However, Kiefer (1997) asserts that unanimity rule may result in political deadlock, because nothing could be changed in current situation, and that it is not realistic, while majority rule cannot avoid winners and losers (majority-minority distinction). According to him, it is necessary to find alternative methods of making collective decisions because of the limitations of democratic systems and because of the danger that collective decisions could be by-passed by independent regulatory organizations. From this point of view, one may conclude that the emergence of IRAs aim at achieving the same results as the constitutional economics does. Of course, IRAs cannot be a complete alternative to an economic constitution, but one has to remember that to organize IRAs as constitutional organs is a very popular debate today and there exist pressures for the implementation of such a reform in many countries.

Public choice theory played an important role in the reforms of privatization of public entities, globalization of markets, deregulation of rigid government rules and implementations. In the literature on public choice theory, it is widely discussed that privatization of public utilities caused the monopolization of private capital in many sectors, which is seen as an important threat to competition and well-functioning of the markets. Therefore, the constitution of regulatory agencies was legitimized on

such reasons as providing competition in these sectors by avoiding monopolistic structures and controlling some privatized corporations that are strategically important for the public interest. As a result, public choice theory could be seen as one of the backbone of the process from privatization to re-regulation.

Bosanquet (1983) criticized the public choice school for neglecting the reform of government services and putting too much emphasis on privatization. It would be unfair to direct such a criticism to public choice theory, because it has devoted an important energy to support neo-liberal economic theories and has contributed to the development of the policies of privatization, deregulation and liberalization, but some public choice theorists have put special emphasis on internal bureaucratic reform as well. Niskanen (1973), for instance, considered the alternatives to bureaucracy. He defined government bureaus as monopolies with no incentive to be efficient, whose only goal is to maximize their budgets and offered to introduce personal reward systems for senior managers, or to encourage competition between bureaus to improve their internal working, because competition between bureaus could help to increase the information available to politicians due to inter-bureau rivalry for budget. Similarly, Tullock (1979: 37) is very critical of public bureaucracy and offers to build consumer-oriented, competitive public bureaucracies. Niskanen (1975: 637) concludes that inefficiency is not a necessary characteristic of the supply of government services. For a specified output, costs can be reduced by increasing competition among bureaus, by contracting with private firms, and by reducing the absolute size of official organizations (Niskanen, 1978: 167). Niskanen also points out to the necessity of developing market alternatives to government structures and promoting political and constitutional reforms. He attaches to institutions a great importance and emphasizes that public choice aims at “more comprehensive and long-range reform as opposed to piecemeal, pragmatic change” (1973: 84). Ostrom is another public choice theorist who suggested many reform programs geared to alter and restructure administrative systems such as decentralization of government bodies, competition within the government sector, the transformation of public organizations into private firms etc. Ostrom (1973) argues that the problems of the big bureaucracy could be solved by the devolution of

public services to the control of the locally elected boards. As a result ‘public choice’ would be maximized and bureaucratic input minimized. It is assumed that if the clients or consumers of a service elected the relevant board, and paid directly for the service, they could make a rational choice of the amount and quality of service they required. Ostrom asserts that bureaucracy would become again the servant of ‘public choice’ through these reforms. Ostrom’s radical proposal contrasts the theory of maximizing top-down political control over a large centralized bureaucracy.

Most of the propositions of public choice theorists about public organizations affected directly the new paradigms in public administration and had considerable repercussions in the organizational structure of IRAs. That is why; there is a close relationship between public choice studies and the paradigms developed in the public administration literature after the 1980s. These public administration theories and their reform packages for administrative systems will be elaborated in the fourth chapter with regards to their contribution to structural and functional organization of the IRAs.

In some recent writings, public choice is announced as the leading theory of re-regulation in the 1990s. For instance, Getz argued that,

Public choice is a leading theory of business regulation. Public choice provides a supply-and-demand-based exchange model of business and regulatory institutions where regulators are seen as suppliers of regulations for incumbent businesses who ‘buy’ those regulations with electoral resources (i.e., votes, campaign contributions, and the like). (Getz, 1997; cited in Jarvenpaa *et al*, 2003: 73)

According to public choice theory, regulation promotes preservation of ‘control’ and economic incentive by incumbent firms. Jarvenpaa, Tiller and Simons (2003) asserted that regulatory organizations do not only serve for competition in the market, but they also protect the firms in the regulated sector from extreme competition. Regulation neutralizes prices and quality competition and sets entry barriers for the new firms. Essentially, business regulation serves as a tool for

incumbent business interests to do through regulation what they would be unable to do by themselves in the private sector; because it creates entry barriers and helps firms to act collectively in the market to take surplus from customers. Since, public choice gives importance to profit-maximization possibilities of capital; it would support such a regulation. Another critical point is that the capital flows in the global market needs a legal order and a protective regime for its interests in national economies. Therefore, there arises a necessity of regulation according to the principles of free market economy in all countries and the impartial organizations to undertake such a duty at the national level would be IRAs.

Public choice also provides with a tool to analyze the potential risks of the new regulatory organizations. It warns against the regulatory processes that may well be designed to favor incumbent interest; nonetheless incumbent firms may come to control the regulatory processes by capturing the regulatory agencies. Thus, regulatory agencies still carry the potential of regulating the product or market space via legislative fiat or bureaucratic prerogative (Jarvenpaa, Tiller and Simons, 2003: 81). The probable self-seeking activities of the regulators in IRAs, the possibilities of the regulatory capture (the particular interests of regulated organizations or firms can capture the goals and interests of regulatory agencies), or even the potential public authority of regulatory agencies to intervene the market freely would naturally be criticized by public choice authors in general. On the other hand, IRAs are serving as instruments for the realization of many public choice assumptions, so the critical point is to organize the structure, managerial principles, the authority, control mechanisms and functions of these new agencies in compliance with the tenets of public choice theory and of neo-liberalism. Finally, it is explicit that the scope and the scale of IRAs defined within the perspective of the neo-liberal economics, public choice theory and new public management.

Public choice theory destructed the good will for political and bureaucratic structures, discouraged the trust to politicians, bureaucrats, electoral processes and extolled the free market economy. It has many inconsistent and not well-grounded assumptions, and paradoxical recommendations. Some propositions are even

antidemocratic, unrealistic or do not seem to be politically feasible, but all of these imply that public choice theory indicates a movement of withdrawing the state's role from the economy and of changing the rules of the game in the relationship of state and market.

It seems hard to talk of a complete theory of constitutional economics as well. Rather, there seem to be diverging approaches that differ not only in their assumptions or their conceptions of constitution but also in their research agenda. Therefore, one may conclude that there are many limitations, shortcomings, paradoxes in the assumptions and arguments of the approaches such as public choice or constitutional economics. Yet, it is not an objective of this study to elaborate these, since the scope of the thesis is restricted to the role and influence of these approaches in the emergence of the IRAs.

Evidently, there are some extreme forms of public choice theory which effectively deny any role for the public sector in economy. Authors such as Kelman (1987) cited that public choice theory should reject any "public" or "civic" entity. Conversely, the realities of public sector and market are not the same as public choice assumed, so public choice ideas should be changed slightly in practice.

Finally, it is worth noting that public choice theory takes a free market model as its benchmark for evaluating the political behavior, however there is obviously a wide gap between the idealized market model of economic theory and the actual modern market system. Moreover, public choice's basic objective could not be to abolish political structures or democratic processes; rather it would aim to change current institutions and create new institutions serving to its own assumptions. Then, IRAs serve and response to ideals of public choice theory.

CHAPTER 4

NEW PUBLIC MANAGEMENT AND INDEPENDENT REGULATORY AGENCIES

Public management is a popular term occupying an important place in public administration studies, especially for the last twenty years. Various approaches are emerging both in theory and practice with different names, which are presenting themselves as the suitable and most beneficial paradigm for public management. Public management can be considered as a new framework that is trying to redefine the focus, language and theoretical basis of the study of public sector, drawing on ideas often external the literature of the traditional public administration (Gay and Jerkins, 1995). Managerialism is the first approach emerged within the framework of public management thought in the 1980s. Thereafter, other approaches have emerged to bring new dimensions to the tenets of managerialism with different names. New public management (composed of managerialism, public choice and some other theoretical origins) is one of those approaches emerged in the 1990s within the framework of public management, but has become so popular and spread so widely that its rubric has become a common name for all the administrative reforms taking place within the public sector after the 1980s.

This chapter is devoted to examine the basic premises and aspects of NPM and its relationship with the emergence of IRAs. Yet, in order to achieve that aim, it is necessary and useful to inaugurate the chapter with a brief evaluation of managerialism.

4.1. MANAGERIALISM

Management studies have firstly developed in the analysis of the private agencies and they influenced the organization, administrative systems, personnel and operations of these agencies. Thereafter, through the insights provided by the managerialism approach, the developments in the private agencies have been transplanted to public agencies in the same way to create the so-called ‘more efficient’ and ‘effective public sector’. Management skills and techniques were announced as applicable to public agencies and public civil service without any revision. Yet, one of the shortcomings of using managerialism in the public context was that it was narrow in its content, because it concentrated only on those public organizations, which were defined as executive organizations and proposed managerial techniques to increase the efficiency of these organizations. Moreover, it neglected the political, economic and social dimensions of public administration, all of which have important impacts on administrative systems. In fact, public organizations are the basic functional instruments of the administrative power and activities, but they do not constitute all of the public administration system. Consequently, an exclusive focus on the organizational aspect of public administration and neglecting other societal dimensions weakens its chance to emerge as a new paradigm for public administration (Üstüner, 2000: 17). Furthermore, taking executive agencies as the total framework of public administration is also problematic, because public employees and public administration systems cannot be easily separated with strict borders from the legislative and judicial aspects of the administrative system.

Another criticism that may be directed to managerialism is that it is taking public and private organizations with no difference.⁶ The implication of this is that all the managerial developments in private sector are offered to be applied directly within the public sector. However, there are many significant differences between public

⁶ For details, see: Murray (1983).

and private organizations, public and private sectors both with regards to their structure, values, goals, personnel systems and operations.⁷

It is because of all above problems and contradictory points emerged within managerialism approach, and cited above that new approaches had to be developed. Those new approaches have added new dimensions to managerialism to solve their methodological inconsistencies and problematic issues and tried to be more inclusive. One of them is new public management (NPM), which has become the most popular and comprehensive approach within the public management thought. According to Hughes (1998: 59) a basic difference between managerialism and NPM was that managerialism was a technical specialization within the public administration, while NPM is a movement which aims to replace the traditional model. Moreover, while managerialism proposed only reforms to the public sector, NPM embodies a transformation of the public sector and its relationship with government and society.

4.2. NEW PUBLIC MANAGEMENT

A new managerial approach has emerged both in theory and practice in public administration and it has continuously reproduced itself in the 1980s and the 1990s on the basis of differing ideas and propositions of scholars and with respect to changes in managerial reforms in different countries. Those scholars who see these new developments in theory and practice as a paradigm shift in public administration have used different labels to define it, such as, a “post-bureaucratic paradigm” (Aucoin 1990; Barzelay, 1992), “neo-managerialism” (Terry, 1990), “market-based public administration” (Lan and Rosenbloom, 1992), “entrepreneurial government” (Osborne and Gaebler, 1992), “new public management” (Hood, 1991). Hood was the first scholar that has used the term ‘new public management’. He has grouped a set of changing practices, values and ideas in the public sector management and announced the birth of ‘new public management’ as a revolutionary process that

⁷ For details, see: Allison (1983); Fesler and Kettl (1991).

underlies the transition from traditional public administration to a new managerial paradigm (Hood, 1991).

Although some authors see the managerial theories developed after the 1980s as different paradigm shifts in public management literature, some others see them as the variations of the continuous public management approach, which have slight differences from each other (Üstüner, 2000). Today, New Public Management is a widely accepted term in defining the changes both in theory and practice of public administration. Yet, because of the debates on what it is, what it should be and what it comprises, it should be treated as a complex and multi-dimensional approach.

4.2.1. THE ORIGINS OF NEW PUBLIC MANAGEMENT MOVEMENT

The proponents of the NPM have firstly chosen a ‘common enemy’ for them that they have labeled as the ‘traditional public administration’, in which they have grouped all the old paradigms of public administration. Hood (2000: 7) asserts that the traditional models, especially the bureaucratic styles stressed the Weberian notions of rule-boundedness, rigid hierarchy, focus on compliance with processes rather than results, professional rather than corporate or managerial orientations, and insulation of public from private management, with an absence of business values and techniques in public service routines. In a similar vein, NPM scholars tried to legitimize NPM as a new paradigm by developing a theory grounded on the rejection of the past. They have declared the traditional organization, method and practices of public administration as too bureaucratic, too inefficient, too unresponsive, too ineffective and too cumbersome and presented NPM as a new way of governing, which would be totally devoid of the shortcomings of the traditional type.

NPM is composed of many reforms, managerial doctrines, and it inspired from other theories of public administration, economics and management. This complexity creates an endless debate about the basic premises and practices of NPM. Some scholars accept it as a new paradigm (Barzelay, 1992; Osborne and Gaebler, 1992; Borins, 1994), but some others do not consider it to be so (Gruening, 2001; Lynn,

1998). The first remark that should be made about NPM is, therefore, that it is not a single and coherent theory. Rather, it has various definitions and it can be seen as a special mix of different theoretical and practical assumptions. Yet, but it is still difficult to say that it incarnates a real new paradigm change.

The theoretical background of NPM constitutes another axis of the debate. Some authors assert that NPM is composed of public choice theory and managerialism (Aucoin, 1990; Dunsire, 1995), while some others cite many other theoretical perspectives influencing NPM. For example, Gruening (2001: 17) claimed that NPM was inspired by theoretical perspectives such as public-choice theory, management theory, classical public administration, neoclassical public administration, policy analysis, principal-agent theory, property-rights theory, the neo-Austrian school, transaction-cost economics, and NPA and its following approaches. He has specified one by one the particular effect of each theory on NPM and added that the practical individuals who advocated and implemented various NPM reforms were influenced by an eclectic variety of these ideas.

The practical applications of the theory are also important in the formation and renewal of NPM. In fact, NPM can be identified as a body of public management reforms emerged in the United Kingdom and United States, continued in New Zealand and Australia and extended many other countries. These various NPM reforms were influenced by an eclectic variety of ideas from different theoretical perspectives. Barzelay (1992) argues that NPM cannot be seen as a set of concepts growing out of a formal body of theory; rather it has largely evolved from an inductive process of observing the new public management practices and then drawing some general conclusions about the underlying principles of the theory.

Some authors correctly point out to the close interaction of NPM with the neo-liberal policies and the New Right ideology (Üstüner, 2000; Pollitt, 1993). Similarly, all the managerial approaches emerged after the 1980s proposed ideas and reforms that are in compliance and in consistency with the neo-liberal policies. NPM shares the main premises of the neo-liberal thought such as the smaller state, increased competition,

free market economy, privatization, and the abolition of state intervention to market. In this framework, all the propositions of NPM, this way or another, served to the creation of a small but effective public administration. According to Pollitt (1993: 49), managerialism is the acceptable face of the New Right thinking concerning the state and it serves the ideological purposes of the New Right such as reducing the government's role through marketization.

The institutional aspects of NPM and its reform agenda may be influenced by the assumptions of different theories, but what is crucial is that NPM has used economic market as a model for reforming political and administrative relationships.

4.2.2. THE CRUCIAL FACTORS FOR THE EMERGENCE OF NEW PUBLIC MANAGEMENT

NPM as a complicated theory and as a movement of incommensurable managerial reforms around the world is an important part of administrative transformation process emerged in the 1980s. There are various factors behind the emergence of NPM reforms. It is possible to classify some of these factors as follows:

- i. The rejection of the past administration: Traditional public administration was under fierce attack for its failures. The traditional modes of service delivery, and the organizational, administrative and personnel systems of traditional bureaucracy were blamed of inefficiency, ineffectiveness, non-responsiveness and non-adaptability to changes. The trust to traditional bureaucracy and politicians had diminished. Moreover, there were global changes in economic systems; ideological alterations in the conceptualization of the state-market relations, which was drastically different from the post-World War II era and a restructuring of the private sector. Corresponding to these changes, citizens increased and voiced their demands for changing the public sector. As a result, a change, or maybe a transformation in public sector in compliance with changes around was generally accepted as necessary. NPM

emerged to provide a theory of such a transformation within the public sector and state-market relations

ii. Economic and fiscal crises of state: Economic and fiscal crisis of state was another factor in triggering NPM reforms. States were undertaking many social, economical and political functions within the post-war period. As a result of the increasing demand for more state expenditures, states went into an economic and fiscal crisis in the 1970s. The fact that the size of the public sector increased to a large amount, but the public revenues declined made states faced with a heavy burden of debts and the increased cost of delivering services. Tax revenues could not be increased due to the resistance of taxpayers and of economic recession. NPM endorsed the idea that inefficient and ineffective administrative system of states and the intervention of state to economy were the reasons behind such an economic and fiscal crisis of state. Therefore, NPM criticized the active role played by the state in managing the economy and in the direct provision of services and proposed managerial reforms as a solution to concerns for economic and fiscal crises of states. One of the main goals of NPM would be, then, to create governments doing more work with less tax income, by finding other alternatives to increase public revenue or other alternatives for the delivery of public services.

iii. Administrative system of states: NPM also shared the arguments of public choice theory with respect to the problems created by self-seeking politicians and bureaucrats, and dysfunctionalities of political systems which resulted in 'governmental failure'. This traditional model is announced as an important cause of inefficiency of state activities. Hence, NPM policies were proposed as influential devices to transform the traditional government model, to introduce the basic systems of governance, to design those institutions that are more democratic, to promote and build civil society, and to reshape relationships between citizens and the state.

iv. Complex institutional mechanisms: The traditional institutional mechanisms were defined by NPM as too complex, bureaucratic, rule-based and unresponsive. It was

argued that the existing structures were not able to meet the needs of global and national challenges, important changes in technological, political, economic and social arenas and thus, they were considered to be obstacles to the development of economic and social welfare. NPM reforms were regarded as an influential solution to this problem, because they were seen as important devices to create those management structures and institutional mechanisms within the government that can enhance the capacity and capability for effective policy management and successful policy implementation.

v. Changes in the Private Sector: The organizational, functional, technical, economic and sociological changes in the private sector have influenced the public sector as well. According to Reschenthaler and Thompson (1998: 72-80) fundamental changes occurred in the private sector product and labor markets which, in some important ways, have transformed the market economy. The stability in relations and status of labor, business, and government that prevailed during the post-World War II period began to collapse in the late 1960s. While the technological revolution increased global competitive pressures, changes in industrial economics, in cost and productivity of capital relative to the cost of labor and management, in transactions costs and the increasing international trade sector created drastic transformations in the operation of the private sector. These, in turn, affected the public sector and increased the public's expectations from government, especially with regards to the substance and process of public administration. These developments enforced managerial principles to be applied directly in the public sector as they are in the private sector.

vi. Market Reforms and International Challenges: Within the context of the globalization process, especially by the help of developments in the information, transportation and telecommunications technologies and as a result of liberalization, privatization, deregulation, convergence, and free trade movements around the world, which are fueled by neo-liberal economics, global competitive pressures emerged. These pressures, especially coming from the international corporations forced many changes in national administrative structures, rules and regulations.

GATT (General Agreement on Trade and Tariffs) agreements played a key role in liberalization of trade in all over the world. Moreover, international institutions like International Monetary Fund (IMF), World Bank (WB) and World Trade Organization (WTO) assured an important function in enforcing national states to make market and administrative reforms within the guidance of neo-liberal understanding. Organization for Economic Co-operation and Development (OECD) prepared reports for the adoption of NPM reforms, which is seen as a crucial complementary to market reforms.⁸ In that context, NPM reforms are generally presented as a necessity of international challenges. Hood (2000: 3) argues that pressures to change public management systems arise from imperatives of international competitiveness and represent an international or even global set of received ideas about institutional design and managerial best practice. Indeed, much of the structural adjustment reforms within the context of managerial principles and market values can be interpreted as an outcome of such global pressures. The movements of privatization, deregulation, liberalization and managerial reforms were presented as new mechanisms for welfare of all citizens, especially by the provision of consumer-focused services and ensuing competition within the global market. Hence, public organizations were designed to act like private organizations on the basis of management principles and market values.

vii. Functional Reasons for Politicians: Elected politicians are other actors who may see functional advantages for themselves in NPM reforms as well, for they can give the provision of public services to private contractors and blame them for problems in the execution of services, prices of services and operational costs. It can be beneficial for politicians to have specialized managerial agencies to tackle with technical complexity and to respond to the changes in the global world. Politicians can accuse traditional bureaucracy of all problems in the public sector and may emerge as problem-solvers by initiating NPM reforms. What they may have in mind is that they can always find ways to control managerial agencies, even the most autonomous ones. Politicians may also increase their control on senior bureaucrats

⁸ For instance, see: OECD (1995).

by employing them on a short-term contract base and direct all public service and the public personnel *vis-à-vis* upper rank managers, because of not the legal rights, but because the performance criteria will be the measure of durability of managers, which will be under the discretion of upper managers.

4.2.3. THE CHARACTERISTICS OF THE NEW PUBLIC MANAGEMENT

The main characteristics of NPM may be classified as follows:

- i. Transforming public sector like private sector: The managerial activities can be applied to the public sector, as they been applied in the private sector. NPM rejects the view that the formal boundaries of “private” versus “public” institutions are important. Private values should be directly transposed to public sector.
- ii. Separation of policy and service delivery: NPM makes a rigid formal separation between policy-making and service delivery. The responsibility of policy would be left to political authorities, but delivery of services should be contracted-out to private organizations. This assumption indicates a management culture that emphasizes the centrality of the citizen or customer, as well as accountability for policy outcomes.
- iii. Stressing outcomes rather than inputs: NPM stresses outcomes rather than inputs in decision-making and service provision. This is the rejection of rule-based and procedural administration of the traditional bureaucracy, and the adoption of a more strategic or results-oriented (efficiency, effectiveness, and service quality) approach to decision-making.
- iv. Disaggregation of public sector: It encompasses the replacement of highly centralized hierarchical organizational structures with decentralized management environments, where decisions on resource allocation and service delivery are taken closer to the point of delivery, where greater relevant information is available, and

which provide scope for feedback from clients and other interest groups. The traditional focus on central government is no longer relevant and a polycentric public administration is favored.

v. Flexibility: Creating more flexible administrative systems and enhancing flexibility in public provision which might provide more cost-effective policy outcomes. Classic bureaucracy was criticized and the objectives of making public organizations, public personnel, employment terms and conditions more flexible were underlined.

vi. Accountability for performance: The efficiency and effectiveness of agencies and public managers are evaluated on the basis of prescribed performance-measurement. Such a control mechanism and customer-oriented structure of public management systems is accepted as the measure of accountability to citizens. Furthermore, 'performance' should replace 'process' as the measure of accountability.

vii. Competition: Competition is seen as the fundamental element of a well-functioning market and public sector, so the creation of competitive environments within and between public sector organizations is an important goal for NPM. Privatization and contracting-out are important complements of the competition principle.

viii. Customer-orientation: NPM aims at creating a customer-oriented public administration. The citizen is considered not only as a voter or a taxpayer, but also as a customer with demands and expectations. This principle brings important changes in the relationship between public administration and citizens. Managerial autonomy, de-bureaucratization, deregulation, privatization and contracting-out policies are a part of citizen-oriented administration.

ix. Marketization of the Public Sector: Some important principles of the NPM as privatization, contracting-out and adapting public mechanisms to market values can be classified under such a rubric. This principle is favored by NPM to create a less-

costly but effective government. According to NPM, market values and private production are superior to public values and public production and thus, competitive markets should provide everything in a more efficient and effective way. Privatization, the use of quasi-markets and contracting out would foster competition and through privatization and contracting-out, governments would do 'steering' rather than 'rowing'. The essence of contracting-out is to separate the 'purchaser' of public services from the 'provider', with the purchaser(government) being the party who decides what will be produced and the provider (private or hybrid organizations) being the party who delivers the agreed outputs and outcomes. In that way, governments are expected to steer and contractors are to row.

x. Performance-measurement: According to NPM, public agencies and public personnel should function to achieve pre-defined goals. Strategic planning should be done in all agencies whose goals should be prescribed and performance measures should be pre-defined. Furthermore, public managers should set their goals, control and establish auditing mechanisms. The success, accountability and transparency of public agencies and personnel should be determined according to performance evaluation. In that situation, public personnel would be employed on the basis of contract, not tenure and their employment conditions would be determined according to their performance. In case of success and failures, performance rewards and sanctions schemes would be developed.

xi. Less Costly State: Budget constraints, reducing idle staff in public agencies, abolition of redistributive functions of state, financial management, improved accounting, and the use of information technology can be enumerated as some elements of the cost-effective state, which are emphasized generally within the NPM reforms as ideal properties of the state structure and functioning.

xii. Effective management: NPM claims that public managers should be given managerial autonomy and power. They should be free in decision-making process and should be accounted only for outcomes on the basis of pre-described goals and performance criteria. Senior managers should have freedom in choosing proper

policies for better provision of services, and evaluate the performance of public personnel according to a pre-defined set of performance measures and should be free to hire or fire public employees as are the managers within the private sector.

xiii. Improved Regulation: NPM assumes that markets or market type mechanisms should take over much of the demand and supply function and determine resource allocation, but there should be regulatory regimes to oversee market mechanisms as well (Bemelmans-Videc *et al*, 1999: 17).

4.3. THE REINVENTING GOVERNMENT APPROACH

“Reinventing the government” (or entrepreneurial government) is a managerial and market-based government approach, which emerged in the USA, but became popular in all over the world as an important part of the NPM movement. This approach was developed and announced by Osborne and Gaebler in 1992 through their famous book, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*. Osborne and Gaebler (1992) accused the traditional public administration system for being dysfunctional, ineffective and inefficient, and asserted that the government should not be abolished totally, but it should be reinvented. In order to redesign the government as an effective one, Osborne and Gaebler have classified ten principles. These principles may be summarized as follows (Lako and Nelissen, 1999: 236-7):

- 1) Catalytic government: Governments should delegate all their possible functions to privatized agencies. This involves the separation of policy making and executive functions and delegation of executive functions to the private sector.
- 2) Community-owned government (public service delivery by citizens): Governments should not provide all the services but they should enable community to act like entrepreneur to provide its services by its own.

- 3) Competitive government: There should be competition both in the provision of services and between the institutions of the government. This situation would provide an efficient and client-oriented provision of services.
- 4) Mission-driven government: This involves a shift from a rule-based system to a 'goal-oriented' government system. Government institutions should limit rules and regulations and should attach more importance to mission statements. By this way, productivity, flexibility and innovation are expected to be improved.
- 5) Results-oriented government: Institutions should not be evaluated and financed on an input-basis any more, but rather on an output-basis, which would be ensured and guaranteed by a performance-measurement system.
- 6) Customer-driven government: Government institutions, like private firms, should see the users of their services as customers. This implies that government services should be continuously improved and determined according to wishes of customers, so that service delivery of government is improved on the basis of market values.
- 7) Enterprising government: Government organizations should not only spend money for services, but they should also earn revenue from the provision of services. This implies that government institutions would work as private firms, so public managers would not work for budget-balance, but they would search for making profit in the provision of services.
- 8) Anticipatory government: Government institutions should be proactive, rather than being reactive about services they deliver. They should follow all the current developments, and take necessary measures to avoid wasteful use of services.
- 9) Decentralized government: The governments should develop necessary mechanisms to decentralize decision-making in order to fight against bureaucratic limitations, hierarchy, and over-centralization of decision-making process, which decrease the quality of services. Hence, decentralization, delegation of authority, and participatory mechanisms are promoted.

10) Market-oriented government: Government mechanisms should operate on the basis of market values and principles. For example, the hierarchical ‘command-and-control’ mechanism should be replaced by a market-oriented ‘incentive’ mechanism.

“Reinventing government” approach aims at replacing the existing government systems and initiating a market-oriented government providing goods and services more qualitatively according to customer choices and it has been very influential in the USA.⁹

There have been some criticisms against the “reinventing government” approach. First of all, it was claimed that many principles of the “entrepreneurial government” were normative and their practice had not yet been tested completely. Lynn (1998:117-8) asserted that changes made as a result of reinventing reform remained highly limited, most of the necessary reforms could not be completed or followed later. Hence, most of them did not seem to be realizable in practice. Secondly, it may be argued that Osborne and Gaebler focused on government as an enterprise and they brought technical resolutions to change that apparatus. Nonetheless, government system is interconnected to many complicated mechanisms. Therefore, the assumptions isolating government from other mechanisms in society and from other means could not be realizable in practice. Thirdly, the approach may be criticized of concentrating on those values of efficiency, effectiveness and simplicity, but of neglecting the classic demands of justice, legality, and equality before the law. Fourthly, it was told that entrepreneurial government necessitates reforms such as deregulation, delegation of authority to societal or market authorities, and empowerment of clients, which were not as simple as in theory. In a complex

⁹ President Clinton has declared that Osborne and Gaebler’s book should be the handbook of all public employees. Inspired from the principles of entrepreneurial government indicated by Osborne and Gaebler, President Clinton decided to conduct a research about the functioning of American government system. This research was made by a committee chaired by Vice President Al Gore and the results were presented as a report with a rubric as ‘Report of the National Performance Review’ to the President Clinton in 1993. There were four main goals in the NPR report: cutting red tape (a shift from accountability for following rules to accountability for achieving results), putting customers first, empowering employees to get results and cutting back the state to its basics (Gore, 1993: 6-7).

society, within complicated relations of state, market and society, for example, it is not possible to abolish rules easily, because abolishing some rules to deregulate would probably be followed by the emergence of more rules to regulate. Fifthly, it can be stated that “entrepreneurial government” approach is a part of an ideology and it is supporting a minimal state. So, its vision of state and ideas about intervention of state to market can easily be refused by other people supporting a different understanding of state. Sixthly, Osborne and Gaebler have also ignored the basic differences between private and public sectors, or private and public organizations, or even between business and the government. Many authors pointed out to the fact that governments cannot be run like a business easily, because of these.¹⁰ Seventhly, Osborne and Gaebler saw the creation of an “entrepreneurial spirit” culture in society as a necessary initiator of enterprising government, but cultural changes are not automatically realized, because people do not embrace the reforms made by politicians and administrators mechanically. Finally, some authors even concluded that the principles of “reinventing government” approach are not new, so it is not inventing anything new. Furthermore, they underlined the relationship of this approach to New Right and neo-liberal movement, and argued that it is trying to constitute a government model in accordance with basics of the neo-liberal thought (Üstüner, 2000: 24).

All this discussion reveals how “reinventing government” approach can be seen as a variation of NPM. The motto of “reinventing government” approach was to invent a government that works better and costs less. Osborne and Gaebler have called this government as enterprising government, which can be defined as a government responding to demands of citizens in a market-oriented way. The importance of this approach resides in that it is clearly based on market-oriented and managerial principles, which are also dominant in NPM. Although, this approach should be taken as a part of NPM, the reason of focusing on it is due to its strict emphasis on market-based government system, competition, decentralization, and mission and client orientation. In fact, its stress on such principles has important implications for

¹⁰ For details, see: Rainey (1991); Denhardt (1993).

the emergence, structure and functions of IRAs, which will be discussed in detail later.

4.4. PUBLIC CHOICE THEORY AND NEW PUBLIC MANAGEMENT

It would not be wrong to assure that there is a close relationship between public choice theory and NPM. Some authors asserted that NPM is composed of public choice theory and managerialism (Aucoin, 1990; Dunsire, 1995). Some others claimed that there are many contradictory points between managerialism and public choice, so their combination cannot constitute a coherent theory (Üstüner, 2000). Though, NPM is composed of many other theoretical origins other than public choice and managerialism,¹¹ this part of the chapter is devoted to make a general evaluation about the relationship of NPM and public choice theory.

Economic theories developed within the neo-liberal perspective have become very influential in the definition of the appropriate role of the state and necessary structural and functional organization of the public agencies. Especially, the economic theories, such as public choice theory, transaction cost theory and principal agent theory have permeated into NPM, which is developing assumptions for the reorganization of the public sector. For instance, IRAs, which emerged as key element of NPM reforms, are also important actors in the market order proposed by those economic theories and the rationale behind their creation basically originates from the attacks of the public choice theory to traditional political and administrative systems.

There are various similarities between public choice theory and NPM. Both the public choice theory and the NPM are based on rational choice and economic-based analysis. Gruening (2001) made an analysis on basic principles of NPM and public choice and argued that some of the main principles of NPM can be found in public choice assumptions as well. These are budget cuts, privatization, separation of

¹¹ For details, see: Gruening (2001).

provision and production of services, contracting out, user charges, competition, decentralization, legal spending constraints and improved regulation.

Public choice theory has put forward an explanation of governmental failure and made reform proposals on the basis of market theory. It refused traditional administrative system based on respective trust of politicians, bureaucracy and citizens. It criticized traditional bureaucracy for being too big, corruptive and inefficient and offered to set constitutional safeguards against political, bureaucratic and economic exploitations. One of the administrative reform proposals of the public choice theory was the creation of a polycentric administrative system against the traditional administration which it had defined as monocentric administration. In such a polycentric administrative system, the provision and the production of services should be separated. There should be competition both between public agencies and within public agencies about the provision of services. Moreover, private sector and public agencies should compete about the provision of services and services should be privatized by contracting out some services and goods to private sector for acquiring a more efficient, customer-oriented and transparent service provision. According to Ostrom (1973; 1977), such a polycentric system can only be achieved in a highly decentralized system, for example in a federal system, and he argued that user charges and responsiveness to citizens' demands would be realized better in a polycentric system. Vincent and Elinor Ostrom presented public choice as a new approach to public administration and made critical proposals for redesigning the public sector (Ostrom and Ostrom, 1971). According to Self,

A basic goal of public choice writers was to 'empower consumers' by giving them a wider choice of services. The intention is to stimulate competition, and to reduce the powers of bureaucrats to act as 'gate keepers', controlling the allocation of services in a paternalistic or authoritarian manner. Public providers would no longer have a monopoly position, but would have to compete for clients with each other and preferably with private providers as well. (Self, 1993: 129)

As can be remembered, performance measurement is an important principle of NPM. By sticking to this principle, a public choice scholar, Niskanen (1971) has proposed to pay managers according to their performance, for example by permitting them (or their agency) to keep a part of the difference between their approved budget and their actual expenditures. Niskanen criticized traditional budgeting and saw competition for budgetary resources as an essential factor for cost-effective public policy.

Frant (1998) has explored the implications of ideas from the New Political Economy (NPE) for the NPM, and vice versa. He defined NPE, as a collection of recent ideas from economics that are currently having a significant influence in political science such as ideas from the new institutional economics, such as agency theory, as well as, ideas of the public choice theorists. He defined NPM as a set of bureaucratic-reform ideas sometimes referred to as “managerialist”, and drawn largely from the private sector which, in the US, have popularized as “reinventing government”. He has asserted that NPM is a normative theory; it takes bureaucratic organization and develops many strategies on the basis of making it more flexible, customer-oriented, transparent, efficient and effective. On the other hand, the problems about traditional bureaucracy and public sector provision of goods and services are mostly rooted from political reasons, from interventions of politicians. Therefore, NPM should benefit from arguments and proposals of NPE about governmental failure, the exploitations of politicians, bureaucrats and citizens for proposing a comprehensive theory and reform about public sector. According to Frant, the problems of bureaucracy are largely political problems. Therefore, bureaucratic reform must be viewed in tandem with political reform. NPM can learn from public choice’s emphasis on the incentives of self-interested politicians and public choice can learn from NPM’s normative approach and focus on citizens. Public choice has articulated the dysfunctional characteristics of traditional administrative systems, emphasized the failures about the public organizations and public personnel. NPM has benefited from these assumptions, especially with regards to the rejection of the traditional public administration paradigm.

Public choice theorists criticize public sector heavily and they have implicitly attached to the private sector a better position as compared to the public sector. They have foreseen a maximum role for market actors and a minimal role for government. They appraised competitive relations as a source for accountability and efficiency and considered private markets better than ‘political’ markets, by their nature. Such ideas had also crucial impacts in NPM’s propositions, which were presented as alternatives to the traditional functioning of public sector.

Public choice theory fears of the expansionist character of the political and bureaucratic system, which is caused by the self-interest of organized groups and bureaucrats and by their coalitions with politicians. Privatization, marketization, budget cuts, decreasing the amount of public sector have become some crucial policy options in order to avoid this propensity for expansion. Such policy choices have direct influences on organizational structure, public personnel systems, delivery of public services, and the conditions of bureaucrats and of politicians. Therefore, it would not be misleading to argue that such changes in the public sector are guided by NPM’s collaboration with managerialism and public choice theory.

Yet, one may cite serious criticisms and objections against the marriage of public choice theory and managerialism. First of all, public choice theory has many paradoxical claims because of its formulation of political systems as a composed of self-seeking politicians, bureaucrats and citizens. Its paradoxical statements have contrary implications for managerial principles. For example, public choice theory criticizes bureaucrats for bureau-maximization and proposes to reduce their powers, but managerialism tries to bring instruments to empower the managerial autonomy of bureaucrats. This creates a controversial situation that remains to be solved in NPM movement. Secondly, public choice theory criticizes traditional democratic choices, electoral systems, voting rights of majority and especially representative democracy. It sees politicians as self-seeking actors under the vision of public interest. On the other hand, managerialism takes management as a technical issue, an organizational problem of executive branch, so proposes to create an effective and efficient bureaucracy that is subservient to politicians. This is another dimension that is

melted within the comprehensive interpretations of NPM, but the problems of democratic accountability and transparency are still open questions for NPM. Thirdly, Self (1993: 157) argued that NPM emphasizes the importance of comprehensive resource planning and of a stronger delegation of discretionary authority to line managers. Although, NPM shares with public choice an emphasis upon economic incentives and market techniques, it has a priority of strengthening the role of public service managers as with tightening political control. On the other hand, public choice theory favors a polycentric and competitive design of the government system, which diverges significantly from the managerial emphasis upon corporate planning and co-ordination. Thus, within the machinery of government, conflicts arise both between concepts of political control and managerial discretion, and between a competitive and coordinated system of public administration. Fourthly, the market model appraised by both public choice theory and NPM does not work well as presumed in theory. Public choice theory talks about all public servants as self-seeking individuals, but it is a well-known fact that public servants may act with selfless and public-spirited values. Drawing a strict line between public and private provision and seeing public sector as inferior to private sector are some other problematic issues.

Despite all these methodological inconsistencies, one may conclude that the foundations of public choice theory, especially about the failure of public sector have contributed to the development of NPM to a great extent. Some ideas of public choice theorists were tested on a large scale for the first time with NPM (Gruening, 2001: 19). NPM tried to show that “government failure” could be reduced by administrative reform without sacrificing basic democratic rights and choices. Reschenthaler and Thompson (1998: 99) asserted that NPM can rehabilitate the public sector for itself and for public and it can re-frame public sector programs and management in a positive context as opposed to the largely negative and cynical context which the public choice framework has produced. NPM is seen as an important step forward in solving the problems of public sector failure and creating public trust to public agencies and public employees. It may thus be deduced that NPM took the negative critics of public choice theory against the structure and

principles of traditional public organizations into consideration with respect to the designing of the structure, management principles, and functions of IRAs.

4.5. NEW PUBLIC MANAGEMENT REFORMS AND THEIR IMPLICATIONS FOR INDEPENDENT REGULATORY AGENCIES

The NPM movement should not be limited to a set of theoretical debates and propositions. It is also a set of influential policies being implemented around the world. Various administrative reforms are being applied in different countries under the label of NPM movement. Therefore, the evaluation of NPM reforms and its consequences opens the way for another endless debate with regards to concrete policy-making. Since NPM can be traced back to a variety of theoretical origins and it can be argued that each of these theories, approaches or ideas may have influenced different NPM reforms interchangeably. However, it is explicit that all the related or non-related reforms made around the world under the rubric of NPM are influencing the NPM literature. One cannot make a clear distinction between the essential NPM reforms and reforms out of NPM, because it is obvious that NPM literature is also incessantly renewing itself by internalizing world-wide reform practices made under the title of NPM. In that part, some of these reforms which are labeled as NPM reform in popular agenda will be explored; their consequences and their implications for other administrative, political and economical reforms within the public sector will be examined. So that, one can grasp how the NPM reforms have opened the way for the organizational and functional structuring of the IRAs.

Scholars observe many NPM reforms in different countries. Some countries are being announced as champions of NPM reforms and some others are announced as laggards. When one examines the different features of NPM reforms in different countries, it is possible to argue that the process of public management reform is sweeping many countries and most importantly such a management reform process is being used to reshape the role of the state and its relationship with citizens. According to Kettl (2000: 1–3), public management reforms aim to find ways to produce better government services with less tax money; to use market-type

incentives to root out the pathologies of government bureaucracy; to provide a customer-oriented service delivery; to make governments more responsive and effective by shifting programs to lower levels of government or shifting responsibility within public agencies to give frontline managers greater incentive and ability to respond to the needs of citizens; to improve government capacity for more effective policy-making; and finally to increase accountability of government. As can be seen from these explanations, NPM reforms are overlapping, so it is difficult to analyze them as completely separated from each other. Therefore, though some of NPM reforms will be elaborated and discussed under different frameworks, one has to keep in mind that each of these reforms has implications for others. Here is a sketch of some of the NPM reforms put into practice in different parts of the world:

1. Decentralization: Decentralization is a widely-used concept in NPM reforms. It is also a common proposition in some other theories of public administration. As a NPM reform, many different meanings are attached to decentralization.

According to Borins (1994) decentralization is equated with increasing managerial autonomy within the context of NPM. For such a reason, central administrative controls should be reduced, organization and individual performance should be rewarded, and managers should be free in acquiring human and technological resources in order to meet performance targets. Decentralization may also contribute to the dispersion of competition in the market and show the way in which goods and services should be provided by the public sector or private sector. Decentralization may empower citizens through enhancing participation in decision-making; it may be useful for improving economic and managerial efficiency and effectiveness and for enhancing better governance.

Hope (2001: 122-6) has made a study on NPM reforms used for the transformation of public sector management in Sub-Saharan Africa. He has classified four different forms of decentralization as deconcentration, delegation, devolution and privatization. Interestingly, he defined deconcentration in NPM reforms as a movement of breaking up of monolithic bureaucracies into agencies. Delegation is

the transfer of specific authority and decision-making powers to organizations that are outside the regular bureaucratic structure and that are only indirectly controlled by a government, such as regional development corporations, and semiautonomous agencies. Delegation is seen as a way of offering public goods and services through a more business-like organizational structure that makes use of managerial accounting techniques normally associated with the private enterprise. Devolution refers to the granting of decision-making powers to lower authorities or managers and allowing them to take full responsibility without reference back to the authorizing government. This includes legislative, executive, judicial and fiscal powers in their policy area. Devolution is the strongest form of decentralization. IRAs could be evaluated as a good example of devolution; because they have influential legislative, executive, judicial and fiscal powers, and they have a large independency from central government. Hope (2001: 126) has defined privatization as the transfer of operational control and responsibilities for government functions and services to the private sector (private voluntary organizations or private enterprises).¹²

Pollitt, Birchall and Putman (1998) examined NPM style reforms that have begun in the late 1970s in United Kingdom. They have evaluated the results achieved by NPM reforms and assessed their outcomes. They found that the core of the reforms was decentralization and defined it not as a single process, but a set of processes. According to the authors, there were political effects of decentralization along with their administrative consequences, and they concluded that decentralization is a complex concept with different meanings, most of which have the common ground of transferring of formal authority out from a smaller to a larger number of actors. Hence, under this rubric, authors included devolution or political decentralization as well as the restructuring of relationships between central government and local authorities and agencies, often on competitive lines. Within the fieldwork they conducted in twelve British public sector organizations across three sectors of public service provision like healthcare, housing, and secondary education (four organizations were studied for each sector), they stated that the reforms made in each

¹² Privatization will be discussed in detail in the fifth part called as 'marketization of public goods and services'.

sector under the heading of decentralization took a different track. But the justifications for reform were in each case practically identical: greater efficiency, user-focused services, greater political control, and tighter control over expenditure. Following the new conventional wisdom that public monopolies are inherently inefficient, the reformers wanted to smash the political power structure that previously controlled resources and policies in these sectors. In other words, reformers legitimized decentralization as means of empowering citizens and elected officials *vis-à-vis* bureaucrats and interest-group networks.

All these findings show that, although the justifications for decentralization movements are similar, there are important variations in applications. The justifications of NPM for decentralization are also valid for IRAs. IRAs have been emerging as a part of decentralization process in practice.

2. Civil Service Reform: The proponents of NPM concluded that traditional civil services were providing goods and services in an inefficient and ineffective manner. They were lacking capacity to solve the new problems that governments face; they were suffering from dysfunctional rigidity, lacking of or not caring about performance measurement, and were too corruptive. Moreover, they were too rule-based, thus lacking flexible service and they were input-oriented, so bloated in size in relationship to their outputs. The key elements of NPM civil service reforms should be classified as:

a) Pay and employment measures: Since the erosion and the compression of salary scales of civil servants were seen as an important factor in bureaucratic corruption, a reform strategy in pay and employment measures is initiated. This reform comprises five objectives: an increase in overall real pay levels, the decompression of pay scales to improve the competitiveness of civil service pay at higher levels, a new grading system based on job evaluations, the introduction of performance-based pay, and the improvement of pay policy-making and administration. Following these reforms, NPM has institutionalized a new vision of personnel management dominated by contracts rather than tenure and performance-related reward and

sanction schemes. NPM wanted to establish appointment systems to both public and private sector candidates. Therefore, grading structures have been simplified in many countries and it helped to attract more professionals' transfer from private sector to public sector. Many countries have also downsized their civil services and thereby reduced the number of surplus employees on the government payroll. Competitive and open recruitment procedures with selection based on merit have been initiated in many countries which helped to ensure that vacancies are filled on the basis of skills and competence rather than on factors such as ethnicity, kinship and etc. Merit-based systems of promotion were developed to attract more skilled personnel and so, merit-based recruitment and promotion have served for a more efficient and effective civil service.

These pay and employment measures brought about by NPM are being strictly applied in IRAs. IRAs recruit many private sector candidates as managers, advisors and auditors, who had worked in the private firms before. Public employees in the IRAs are all recruited on contract-based system and they are paid high salaries with respect to public employees in other public agencies. IRAs are dealing with big corporations in the market, so it is thought that giving high salaries to IRA's personnel would avoid bribery and corruption.

b) Professional management reforms: Greater freedom to manage and to choose were two important issues in professional management reform. It was argued that public organizations should be given more managerial autonomy and public departments should be devolved more managerial powers and should be free in choosing policies on its own. Public managers should not be seen as administrators following the directions of superiors, but they should be autonomous in finding the ways of achieving pre-determined organizational goals. They should have full responsibility for outcomes of departments' policies and implementation. Moreover, they should not only be involved in matters of policy, but should also be involved in matters of strict politics as well (Hughes, 1998: 62). Through such reforms, public management was expected to become a form of political management. As a result, the relationship between public managers and politicians would change and the separation of policy-

making and administration would be vanished. These critical proposals find their repercussions in the organizational structure of IRAs and were applied in a wide-range context. In the merely executive public management agencies, politicians still hold the final authority and decision-making power, but cite IRAs as regulating authorities, politicians are totally excluded from policy-making process. The senior managers in IRAs are enjoying almost unlimited authority within the confines of the law in decision-making process about regulated sectors.

c) Effective management reforms: NPM has taken the definitions of efficiency and effectiveness as distinct from those of traditional public administration. For effectiveness, NPM has emphasized that organizations should focus on outcomes or outputs rather than inputs. For the evaluation of outcomes, performance measurement should be initiated as a measure, rather than political discretions. The standards of performance and the main objectives of a policy should be prescribed and then the authorized agency should be left free in the achievement of that policy. At the end, the results should be appreciated according to performance criteria and the prescribed objectives. The performance of the staff should be measured systematically. Thanks to the performance-related reward and sanction schemes in order to increase the performance and motivation of personnel. These reforms are seen as important for improving the effectiveness of agency and staff towards achieving the declared objectives. Such reforms are strictly being applied in IRAs as well. IRAs are using performance measurement techniques in the evaluation of their staff and agency. They are defined as mission-driven agencies, so they focus not on inputs, but on outcomes. They are concentrated on the achievement of their goals, not the rules and regulations. They can even change their rules and regulations according to choices of their clients, which they define as customers.

3. Disaggregation of Public Sector: Disaggregation of public sector could be seen as a part of decentralization movement, but decentralization is a complex concept which is proposed by different public administration theories with different meanings. It would be beneficial to put ‘disaggregation of public sector’ specifically as a reform of NPM, because it is certainly peculiar to NPM. Within the context of that reform,

large public departments are divided into small agencies and public services are designed to be provided by smaller public agencies in a competitive manner both with each other and other providers in the markets. The budgets of these agencies are allocated according to their provision of services and they should be stimulated to function on the basis of their own revenues. In other words, public agencies providing similar services with other market actors should not have extra support from government budget and they should work on profit-making basis as well. These smaller public agencies should be encouraged to contract out their services to private organizations in order to reduce the number of staff in core civil service and to leave provision of services to market as much as possible. Policy administration and service delivery should also be separated by disaggregation of public services. What is expected from these reforms is major cuts in costs, abolition of different transfer payments, competition within public agencies and between public and private agencies and marketization of public services. IRAs have emerged for identical concerns about marketization and competition.

4. Improving accountability and transparency: Accountability and transparency are seen as two basic instruments of NPM reforms to avoid corruption and rigidity in public sector and to enhance efficiency and effectiveness in the provision of goods and services. They are considered as crucial to reduce the rule-based system of traditional administration and to rescue civil servants from heavy confines of bureaucratic rules and regulations. Accordingly, civil servants should not only obey the laws and follow the procedures, but they should demonstrate the highest standards of personal integrity, honesty, fairness, justice and openness through a more accountable and transparent system.

5. Marketization of public goods and services: Marketization of public goods and services can be a better and comprehensive rubric for NPM reforms as privatization, contracting-out, deregulation and re-regulation. Such reform proposals can be seen in other theories; especially the economic theories and they have been internalized by NPM movement as well.

a) Privatization: Privatization is an important component of NPM reforms. It is generally favored and justified on the grounds of reducing public sector, budget deficits and turning the state back to its core functions. The main reasons for privatization are closing loss-making public enterprises, avoiding state intervention to market, the mentality of giving service entitlements to private firms if those services can be better performed by private sector, adapting public sector to market values and necessities and preventing corruptive acts of politicians and bureaucrats through public enterprises and ensuring competition in the market. The privatized services and functions are presumed to be served efficient and effectively by private organizations. As a part of NPM reforms, a basic meaning attached to privatization is that it is a process of the transfer of operational control and responsibilities for government functions and services to the private sector, such as private voluntary organizations or private enterprises. From a wider perspective, privatization encompasses a wide range of policies to encourage private sector participation in public service provision and eliminate or modify the monopoly status of public enterprises (Rondinelli and Kasarda, 1993). Another meaning attached to privatization within the NPM terminology is 'contracting-out'. For this reasons, within a wider context, privatization reforms may also include the commercialization of government services which are contracted out to an outside agency; joint ventures between public agencies and private entities; the sale of some government services or functions, such as water supply and telecommunications to the private sector; management contracts for the private sector to manage specific government functions or services such as postal services; the leasing of government assets that are used to provide public services; or the granting of concessions to private entities to operate and finance some public services delivery. NPM scholars, generally present privatization as more of a management reform issue than a political one.¹³ On the other hand, it is obvious that privatization is not only a management reform, but a political and economic reform as well, because it has many implications for political systems and markets.

¹³ For instance, see: Hope (2001).

Privatization has become a global phenomenon today and it is being accepted as a necessary reform even in most statist countries. Major privatization programs have been initiated in different countries in various public goods and services such as the electricity, telecommunications, banking sectors, water services, transportation services, and etc. Moreover, the core responsibilities of states such as education, health services, and security services were also delegated to private actors through privatization or contracting-out policies.

The complexity of the process of privatization stems partly from the fact that there are different reactions to privatization policies. For example, privatization is accepted as important for financial and economic efficiency, but there is a crucial political opposition against the privatization of some public enterprises or services as well. There is an endless debate about distinguishing between sectors and services that are essential for the public interest and those which should be hived off to the private sector. The privatization of sectors or services that are seen as important for the public interest is a great problem, because such policies are accepted as unpopular. Since the majority can oppose some privatization policies, politicians have important hesitations. IRAs are generally appreciated as a natural outcome of or complementary to privatization process. IRAs are established as public agencies providing competition in markets and protecting public interest in privatized sectors by controlling and regulating those sectors. Of course, whether IRAs are equating customer-interests to general public interests in regulation is a critical point in this discussion.

b) Contracting-Out: Contracting-out is generally presented as an important reform instrument of NPM for separating policy formulation and service delivery in the public sector. Through contracting-out, the central government would be confined to policy formulation and delivery of services would be left to external agencies whether public or private. In other words, NPM seeks to institutionalize a split between purchasers and providers. Government will no longer act as the provider of services but instead will specify the objectives of public programs in contracts and then purchase the relevant goods and services from the contractor who is best placed

whether by price or competence to deliver them. Various public services or functions have been contracted-out as a part of NPM movement. The privatized public services or functions that are not totally transferred to private organizations can be examined within the framework of contracting-out, if only the delivery of provision of such services or functions are given to private organizations by a contract (Zifcak, 2000: 239).

c) Deregulation and Re-regulation: Deregulation is popular reform concept that is derived from economic theories. Deregulation necessitates reducing bureaucratic rules and procedures, abandoning government intervention to markets for the redistribution and income equality, abolishing strict regulatory measures of state in society and market, which has a wider application in terms of public interest and finally enhancing freedom in all perspectives of administration. NPM supports deregulation especially for bringing market values to the public sector and deregulating state monopolies. Deregulation process would be naturally be followed by a re-regulation process, because the majority of society demands regulation in different perspectives of society and market for the protection of basic rights and liberties and there are market values which require regulation to be corrected. IRAs are key actors of this re-regulation process, which have taken regulation authority from elected politicians and re-defined regulation in a market-oriented manner.

4.6. THE CRITICISMS AND THE DISPUTES OVER NEW PUBLIC MANAGEMENT AND THEIR IMPLICATIONS FOR INDEPENDENT REGULATORY AGENCIES

NPM has emerged as a widely-accepted set of managerial reforms in different countries such as the USA, the UK, Australia and New Zealand. Although there are many works which support, promote and approve NPM reforms as well as incentives from international organizations as OECD, there are increasing criticisms about NPM reforms as well. The values, measures, application styles, and consequences of NPM theory and its visible reforms are subjected to an enormous critical debate. This

section deals with making a critical assessment of some of these criticisms and a discussion of their implications for IRAs.

a) State traditions and legal values: NPM drives its propositions on the basis of the rejection of traditional administrative systems, legal and national values which are seen as obstacles for flexible, autonomous and cost-effective functioning of public management in compliance with the market theory. Nonetheless, these normative assumptions of NPM create many tensions in practice, because many of the NPM proposals are strictly in contrast with current state traditions, legal and ethical norms, even with laws and constitutions. Therefore, NPM reforms must reconcile several tensions that strongly influence public management practice. For instance, there is an explicit tension between legal and political traditions and the universalistic principles of management, but it is not easy for NPM to solve such tensions. Mathiasen (1999: 105) asserts that countries may simply reject NPM for seeing it as incompatible with national and legal values, or, alternatively, they may find NPM as unneeded. He adds that comparative studies have shown that national customs and cultures are affecting behavior and private sector management styles in different countries and the same may be true for public sector institutions as well. For example, NPM ideas as empowerment (i.e., delegation of substantive decisions to front-line service providers) and customer orientation may be incompatible with workplace norms or ethics in some cultures. Alternatively, concepts of devolution or decentralization may seem irrelevant in countries where these ideas have been put into practice for many decades.

Another dimension of it is that NPM measures may undermine constitution, laws, widely-accepted traditional measures of administration and political, legal and social values. Of course, it would be an arduous task to analyze the impact of legal systems and traditions on the NPM. An important reason of this is that each country has its own laws, legal systems, and societal traditions, so the compatibility of all those different characteristics with the ideas of NPM must be analyzed separately within the context of each country. However, it would be correct to say that the general good or the general welfare is defined in law, and laws are used to promote these

values over personal gain. As Mathiasen (1999: 107) argues NPM may find itself in court, where economy, efficiency, and effectiveness are not convincing rebuttals to the letter of the law.

NPM reforms are carried out to change the role, organization and functions of administrative systems, so it is natural that its propositions sometimes contradict with legal, ethical and judicial principles and values. Elected politicians are key actors in the democratic systems who will lead NPM reforms. They will give the final decision about which NPM reforms should be implemented in their administrative systems and which should be excluded. Although most of the reforms are being accepted for functional reasons and because of international pressures, politicians are those who are authorized persons at the end. Therefore, IRAs can be functional about the application of unpopular NPM reforms. As agencies of a new era and a new state type, IRAs undertake important policy-making and regulation functions in different sectors by excluding elected politicians and by taking responsibility for the implementation of NPM reforms. IRAs can take unpopular decisions easily, because they are not directly accountable to the general public.

b) No Paradigm Shift and the Problem of Immeasurability: A basic criticism against NPM is that it is neither a coherent theory nor a new paradigm. Most of the NPM principles can be found in older theories of public administration and the others can be seen in economic theories such as public choice, transaction-cost, rational-choice economics, etc. A general idea is that NPM is only representing the necessities of neo-liberal movement within the public sector and will not last long because of its contrasting and blurred characteristics. According to Lynn (1998: 115) the answer to the question of whether the NPM is transforming change in the core functions of government around the world must be not only “not proven”, but “not yet” and very probably “not ever”. NPM is presented as a recipe for correcting the perceived failings of traditional public bureaucracies over efficiency, quality, customer responsiveness and effective leadership, but most of its reform proposals are not seen realizable or successful as well. Despite its assertive solutions for administrative problems, people quarrel about whether its solutions constitute a useful, suitable, or

the right answer. Indeed, NPM values do not correspond to true facts all the time. For example, Frederickson (1996: 268) has defined NPM as “a case of placation” or “a wrong problems problem”. It is obvious that NPM is not without alternative, but NPM reforms are prompted by pressures of international corporations and organizations, especially as a necessity for the provision of international competitiveness.

As far as the coherency of the reforms is concerned, even the OECD (1995: 19) admits that there is no single model of reform, because there are no ‘off-the-shelf solutions’ to the problems of the bureaucratic state. The variations in reforms being applied around the world could be another indicator for NPM that it is neither a new paradigm nor a single, coherent theory. Scholars mostly points to New Zealand NPM reforms to prove that NPM is a single and coherent theory and a new paradigm for public management. Nevertheless, when NPM reforms are analyzed carefully, it can be easily stated that New Zealand reform was based on different theoretical frameworks as economic theory, management theory, agency theory, and theories of public choice, contracting, finance, and accounting. Mathiasen (1999: 96) argued that economic and management theories have been extensively used in New Zealand reform, so it may be stated that the New Zealand model only applied principles of market economics to the management of public policy.

Another problematic issue about NPM is that it is difficult to measure whether the accomplished changes in administrative and government systems are really compatible with the propositions of NPM. The nature, extent and consequences of changes are really difficult to estimate. Even the key features of NPM such as an emphasis on quality and continuous improvement, devolution and expansion of managerial autonomy, a commitment to customer satisfaction are virtually immeasurable (Lynn, 1998: 117). Moreover, these changes are taking place on the basis of different theoretical frameworks, which are hard to distinguish from each other. All these situations make it more difficult to find a satisfactory answer for the above debate.

There are many problems about paradoxes within the arguments of NPM as well. NPM is composed of different theoretical assumptions and some of them are contradictory to each other. For instance, managerialism and public choice; managerialism trusts to politicians at final, but public choice has cynical arguments against politicians. It is difficult to harmonize these two approaches within the context of NPM. Moreover, some NPM arguments are also problematic. For instance, NPM assumes professional, powerful public managers who have full responsibility for results of their policy and for personnel management, but they are also supposed to work for public interest. If public managers are professional managers maximizing their utility by making their agencies more cost-effective and profitable agencies, how they will concern for public interest at the same time remains a vital but unanswered question in that context.

c) Paradoxes of globalization: NPM is declared as a global paradigm and a widely-accepted theory, which has universal principles that must be applied by all administrative regimes. On the other hand, there are substantial elements of diversity as well as commonality in public sector reforms. Although the factors, global necessities and pressures about the application of NPM reforms is an admitted fact, the complex responses in practice are disturbing NPM proponents. The opponents of NPM interpret such complex and contradictory responses as an evidence for their claim that NPM's assumptions are not facts, but normative values. Hood (2000) defends the validity of NPM principles and claims that NPM is a universally accepted set of managerial reforms due to global pressures and enforcements for better public management systems contributing to international competitiveness, but some countries are slow in the application of these reforms. Hood states that all countries have a single path about reforms, that is public sector management, and the tardiness of some countries about application is only sourced from their adaptation problem to NPM reforms because of cultural diversity, administrative traditions and etc. Some other scholars reject such a convergence in public sector management and emphasize critical differences between countries about state structures, political routines, legal and constitutional forms. For instance, Kaboolian (1998) asserts that NPM advocates fail to see NPM as a global trend because the change is only on

language and slogans, the use of technology in administration and the service-management issues linked to the development of postindustrial societies.

d) Successful Failure: Although NPM has a strong popular ideological support, the paradoxical situation in its applications and the unintended consequences of implementation of NPM reforms; even in countries which are known as champions of NPM reforms is increasing the voices against NPM movement. For example, some countries as New Zealand, Australia or United Kingdom were declared as champions of NPM reforms, but studies in these countries have shown that most of the NPM reforms could not be achieved or left incomplete. In these countries, a lot of difficulties, unintended consequences and contradictory situations have emerged in practices, which were not foreseen in theory. NPM has accused traditional administration of corruption, inefficiency and ineffectiveness, but in many cases NPM reforms could not solve such problems effectively in reality. According to Metcalfe (1999), the European Union (EU) bureaucracy is a good example of 'successful failure'. Although, there were many scandals and widespread concerns about honesty and effectiveness of the EU bureaucracy, its problems are not still solved effectively by NPM reforms.

Another example of 'successful failure' is the agency "reinvention labs" in USA. Agency "reinvention labs" were developed as a part of Clinton Administration's administrative reform on the basis of 'reinventing government' approach of Osborne and Gaebler, which is generally accepted as a different variation of NPM movement. These labs were created to test the ways that agencies could improve their performance and customer service by reengineering work processes and eliminating unnecessary regulations. Although there was a huge expectation from agency labs to create a widespread renewal within the public sector, General Accounting Office of USA has reported that there has been very little evidence of change beyond the lab sites and changes have remained highly specific and localized. Some other reforms included the downsizing of federal workforce, the possible elimination of entire agencies, the establishment of strategic goals and plans to measure their results, and the consolidation of the functions of several agencies. However, such reforms have

not been completed for a long time and observations have indicated that even the interest in them has noticeably waned (Lynn, 1998: 117-8).

Another example of ‘successful failure’ is the decentralization reform in UK, which was an important reform project in NPM. The general idea for decentralization was to devolve the control of agencies to the public through autonomous agencies, privatization and contracting-out. Decentralization was also equated with the creation of performance-driven organizations, and delegation of greater managerial autonomy that can lead to improved organizational performance. However, the practice did not meet these theoretical expectations. Pollitt, Birchall and Putman (1998) have examined the NPM decentralization reform in UK and concluded that the results are divergent, often ambiguous, and never entirely clear. One of the evident results is that decentralization has reduced the influence of local authorities. Decentralization took place, but in order to decentralize some parts of the system, reformers centralized other parts. Local representative authorities have been “hollowed out” with authority being transferred; sometimes “up” to central government, sometimes “down” to local management units. In general, what has been decentralized (budget freedom and freedom to manage administrative and operative structures) varied from case to case.

e) Hesitancy of Political Leadership: Hesitancy of elected politicians is argued as a common problem about the actual implementation of NPM reforms. It is an almost common sense argument that politicians are willing to apply NPM reforms, but they have many hesitations about NPM strategies and their consequences. A good and visible example is the Ministerial Symposium which was arranged by OECD on March 5 and 6, 1996. In that Symposium, ministers from OECD countries responsible for public management came together for the first time. They have made discussions on public management reforms from their political perspectives. An important consequence of the symposium was that ministers accepted many of the new NPM reforms, but they resisted to throw away some of their traditional responsibilities. One may argue that the ministers recognized the necessity of improving service delivery, treating citizens more like customers, and devolving

more authority to lower levels of government, independent units of government, or nongovernmental entities. Yet, they did not want to concede some traditional responsibilities of the state, such as, being the protector of the general interest and keeper of law and order, provider of fairness and equity, and caretaker for disadvantaged or handicapped citizens. However, these traditional responsibilities were seen as obstacles for NPM in some respects, because NPM fears of arbitrary interventions of politicians to economy in the name of public interest and aims at increasing the capacity of governments on the basis of flexibility, market values, managerial autonomy and less political control. The hesitations of ministers are also indicators of some dilemmas in NPM reform, because ministers do not reject NPM approaches at all, but they find some of them problematic. In that sense, it would be illuminating to quote the words of the Chair of the symposium who depicted the concerns of ministers as follows (Lynn, 1998: 108-9):

- i. NPM proposes a wide decentralization and delegation of authority in delivery of services, but it also emphasizes the necessity of accountability to customers. There is an obvious tension between these two propositions, which cannot be solved easily.
- ii. NPM desires more flexibility in public services, but it will hinder politicians from solving problems of politically embarrassing mistakes.
- iii. NPM necessitates serving all citizens as customers, but it neglects the disadvantaged or vulnerable groups who may not be able to speak up as customers.
- iv. NPM wants to increase local responsibility (devolution) on the one hand, but it encompasses compensating for unequal local resources on the other hand; these aims are contradictory.

The necessity of a change in the public sector is accepted by all the ministers. Indeed, there is dissatisfaction with the public sector and NPM is seen as attractive, especially for its refusal of the traditional bureaucratic paradigm. Moreover, NPM is generally discussed within the broad context of governance, which gives the

reformers the chance of applying almost unlimited reforms in NPM framework. Interestingly, NPM is emerged as a “good politics” for politicians, through which, politicians may promise to make influential changes in the public sector in favor of the citizens. Nevertheless, most of NPM policies are unpopular in reality and they are not supported by the majority. Furthermore, major legal, traditional and judicial obstacles remain in effect in many countries for the application of NPM reforms. There is an extensive system of government control and regulation in many countries, which hinder the proper application of NPM reforms. It is at that point where the importance of IRAs appears and gains significance. The abolition of traditional regulation concerns through the creation of IRAs functioning on the basis managerial principles and providing regulation in favor of market economy would be beneficial for the proper application of NPM principles. IRAs rescued from the political control may serve as an umbrella for NPM reforms in public agencies which are serving within the regulated sectors of IRAs. IRAs may also play an influential role in the dispersion of NPM reforms to other government agencies. IRAs are emerging as necessary institutions for application of some NPM reforms as well, because those reforms are unpopular and politicians have hesitations about their application. So, IRAs can easily undertake the blame for application of such unpopular reforms, because they are not directly accountable to the people.

f) Paradoxes of half-hearted managerialism: In the age of strong managerial rhetoric, many NPM reforms in practice are abused because of different concerns. Hood (2000: 15) calls this situation as “half-hearted” incidence of public sector managerialism, which means that NPM reforms are not effectively applied by politicians or other reformers. Even, in the champion countries of NPM reforms, the basic principles of NPM are accepted as a policy priority, but in practice, NPM applications are undermined by slight differences. For instance, NPM foresees an important discretionary space and managerial autonomy for public managers to be effective in their work. Bureaucracy should be depoliticized, managers should be free in implementation of policies and they should be controlled on performance-based criteria. But, instead of being depoliticized, bureaucracy became more politicized in practice as a result of NPM reforms. Maor (1999) claims that NPM reforms aimed at

making service-delivery aspects of government more ‘business-like’ by establishing various kinds of nominally arms-length relationships between goal-setters and managers, but this produced more, not less, politicization of bureaucracy. The reason is that politicians applying managerial reforms were worried about losing their control over policy implementation processes and administrative structures as a result of NPM reforms, so they preferred to make senior public service positions more ‘political’ (or insecure) to hold bureaucracy under their control. According to Hood (2000: 16), the kernel of half-hearted managerialism is not the restriction of the managers’ tenure as Maor argued, but rather the failure of reformers to cede control of implementation processes to managers or to respect the managerial ‘space’ that politicians cannot enter. Managers are given a wide zone of managerial space, in which they undertake the direct responsibilities for failures in policy implementation, but enjoying great discretion which can be controlled only on the basis of performance criteria. But, in practice, managers are given only some formal directive overriding power that is conceived as an arms-length relationship governed by some sort of contract. Another point is that, NPM reforms aimed at increasing the discretionary powers of public managers, but the controls and restrictions on them have heavily increased. Politicians issued more rules and regulations to control autonomous agencies under the rubric of ensuing compatible functioning of managers with the prescribed goals and policies. Avoiding abuse of discretionary power by managers is announced as the main rationale for increasing control mechanisms on agencies. Hood (2000: 6) observing UK concluded that the emphasis on creating more space for managerial discretion in that country resulted in an increase in new process rules and additional oversight through arms-length regulators of public services.

Such concerns are valid for the functioning and institutionalization of IRAs as well. Politicians are considered to be harmful actors for NPM reforms, so do they for well-functioning of IRAs. However, about half-hearted managerialism, it is also possible to say that the NPM advocates are trying to find excuses for unsuccessful applications of NPM without touching the essence of NPM theory. To blame politicians or bureaucrats for every failure is not a reliable fact all the time, but such

problems attached to politics have provided the basis of emergence of IRAs as independent policy-making public actors freed from politicians. IRAs should be evaluated as a complementary of NPM reforms, because failures of NPM were attached to half-hearted management reforms of hesitant politicians. IRAs assumed to be the most independent policy-making and executive public organizations from politicians, so they are supposed to undertake NPM reforms more effectively. Since, IRAs are influential actors of neo-liberal re-structuring project within the public sector, they would contribute to application and spread of NPM reforms that are generally in compliance with the neo-liberal tenets.

g) Criticism of Ideological perspectives: As stated before, NPM has close ties with neo-liberal economics and market-based approaches. As a result, other approaches that are not supporting neo-liberal solutions would criticize NPM from different ideological perspectives. Lynn (1998: 108) argued that the opponents of NPM may criticize such approaches as neo-liberal policies, market-based driven social resource allocation and a redistribution of property rights from the public sector to the private sector. The propositions of neo-liberal economic theory are contrasting with the legal and ethical foundations of the modern state, and they are disregarding welfare policies in favor of pure economic power. Income equality, social equity or social distribution are not attached any importance in the neo-liberal thought, but allocative efficiency and Pareto Optimum are seen as basic indicators of the welfare of society. Mathiasen (1999: 97) argued that the majority of society may reject the main principles of market theory, so it is therefore important to specify more precisely in what respect this body of economic theory might be applied to public management.

Although the rationale for NPM reforms is in general the same in all over the world, the reforms are taking very distinct features and forms in different countries. The main observable consequences of NPM reforms are privatization, commercialization of public services, flexibility and performance-based criteria for public agencies, reducing budgets of public agencies, and reorganizing public services according to the principles of market economy. These observations remind that NPM reforms are not only managerial reforms, but also and mostly, they are serving as an instrument

for restructuring government mechanisms and for the ideological transformation of state and market relations. Lynn has quoted from an experienced observer of NPM reforms in New Zealand that

the reform of the system of government has these elements: moving purely commercial activities from departments to corporations owned by the government; privatization of those corporations in commercially competitive markets; structural reorganization of government administration to promote efficiency through competition...; a management framework for central government service delivery which centers on the achievement of detailed performance objectives; shrinking budgets. (Lynn, 1998: 114-5)

This shows that New Zealand is a good example of the mentality of NPM reforms that it is simply a process of thinking about public sector in private sector terms. Therefore, it may be concluded that NPM is fixing big government not by planning and analysis, but only by having less of it.

As a result of such assumptions, NPM is accused of being ignorant about the basic differences between public and private organizations, and between public and private values. It has brought a reform agenda that necessitates application of private sector value or mechanisms directly to the public sector. This has created many problems, paradoxical situations and costs for governments and societies. Gray and Jerkins (1995: 90) share the above critics and remind that what is required is an assessment of what systems public organizations need rather than what private organizations do.

Another critical point is that NPM concepts are used randomly in language or as a slogan, but they are not well-grounded or at least hollow in practice. NPM reformers use different concepts or values as a part of NPM reforms in different countries, but it is difficult to determine what these concepts or values actually mean for public services. As an example, NPM often uses the concepts of citizen, customer, client and consumer interchangeably, but the distinction between them is unclear. Some goals or values of NPM are indefinite. For example, the quality of government services is a goal for NPM reformers, but what quality actually means in the context

of different circumstances of government is indefinite. Such concepts as quality, entrepreneurship, and empowerment are motivating values in NPM, but their contents are not clear. Gray and Jerkins (1995: 91) underline the epistemological problem in the language of NPM. Pollitt, Birchall, and Putman (1998) also talk about the complexity of concepts in NPM such as confusion of political accountability with administrative accountability, and the problem of identifying consumers' interests to citizens' interests as a whole.

h) Problem of Accountability: NPM promises that it would create accountable and transparent administration through customer-oriented public management, which means more privatization, contracting-out, disaggregation of public services and increasing managerial autonomy. This kind of accountability understanding has many complexities and problems. In traditional bureaucracy, bureaucrats were responsible for inputs and procedural rules of the administration process, and they were under the hierarchy of ministers and ministers were accountable to the elected assembly. Therefore, there was no accountability problem, at least in legal terms. As opposed to that, the principles of NPM are transforming the role of law in assuring democratic accountability and replacing them with normative implications for accountability: Administrative law mechanisms are excluded through privatization, contracting-out and marketization of public services. A separation is made between public policy and delivery of services, so market values or commercial criteria are valid in the provision of services rather than with respect to the administrative criteria. Managers are freer, they develop performance criteria and public programs and acts according to demands of consumers. Public programs are sensitive not to the general interest or government priorities, but to the preferences and demands of customers. As a result of such a process, customer interests are equated to citizen interests.

Although fiscal accountability can be enhanced through the adoption of a competitive, contract-based, approach to public administration, it may come at considerable cost to political and democratic accountability. According to Zifcak (2000), NPM has generated a democratic deficit with its applications. NPM has been

harmful for not only to parliamentary democracy, but also for deliberative democracy, because NPM has displaced the political and legal understanding of the public bureaucracy by an economic and fiscal management and has reduced the opportunities for active public discourse. Zifcak defined deliberative democracy as the quality of continuing dialogue and debate between government and its constituents about economic, social and governmental purposes. Hence, NPM prefers fiscally responsible decision-making to democratically accountable participation.

NPM has claimed the lack of public trust to traditional bureaucracy and presented its reforms as solutions for the creation of a trustworthy public management responsive to demands of customers. However, its reforms as privatization, contracting-out, replacing public values with private values have shown that its principles are neglecting democratic accountability, public interest or public good. NPM reforms seem to be a process of privatization of public services and administrative systems, so the administration will be getting away from people in advance and there will be no public trust to public organizations, which will lead to lesser accountability and transparency. A good example is the current practice of public procurement through which public services are contracted-out to private organizations. Within the case of failures (higher costs, expensiveness, or ineffective provision), responsible ministers may blame contactors for operational problems in the delivery of services and contractors may blame ministers for spoiling the effects of control and monitoring mechanisms. At the end, accountability may be blurred and the majority of the population may suffer the costs and consequences of these problems.

Accountability and transparency problems are also unsolved tensions within the framework of IRAs. IRAs are not directly accountable to elected assembly for their policies and decisions, so they are not directly accountable to people. But, they are authorized to make policies, rules and regulation, to implement its policies and to apply sanctions in case of non-obedience on behalf of public. The development of IRAs together with good governance approach can be evaluated as a second step to institutionalize the above NPM reforms by avoiding fierce critics for accountability problems, transparency, public interest and marketization of public sector. IRAs are

presented as guardians of goodness of general public by providing competitive relations within the market and society. The policies of IRAs are determined by a Council of Executives, which is composed of candidates selected from the representatives of private sector capital, trade unions and NGOs, and this is presented as achievement of participatory democracy and a solution to problems of accountability. But this is criticized on the grounds that the governance model is not open to participation of all segments of society rather IRAs are under capture of capitalist interests. Moreover, IRAs are also criticized for equating consumers' interests with the general public interest.

4.7. NEW PUBLIC MANAGEMENT AND INDEPENDENT REGULATORY AGENCIES: AN ASSESSMENT

The multiple and changing meanings of NPM ideas and reforms makes it difficult to agree on the basics of NPM, such as its core values, operational definitions and practical innovations. The previous parts have attempted at making a systematic analysis of the origins, context, goals, policies, instruments, and choices of NPM movement as well as the criticisms directed to it. The next part will deal with the theoretical and practical dimensions of NPM and IRAs, and discuss the visible and potential implications of NPM for the functional, structural and organizational characteristics of these agencies.

a. Market, Economics, Capitalism

A basic emphasis in NPM is on market-based mechanisms. Peters evaluated the administrative changes brought about by NPM and stated that

...whether administrative change is being considered in the most affluent country of Western Europe or the poorest country in Africa, the operative assumption appears to be that the best or even the only way to obtain better results from public sector organization is to adopt some sort of market-based mechanism to replace the traditional bureaucracy. (Peters, 1996: 21)

Similarly, IRAs are relying and functioning on the basis of market values. NPM tries to re-organize the public sector in compliance with market mechanisms and puts market at a higher degree for service delivery in terms of efficiency and effectiveness. These goals are also the ones that IRAs strive for: They aimed to regulate market under the guidance of market values and to ensure continuity of competitive free markets by avoiding political or bureaucratic interferences to the market.

IRAs are generally seen as representatives of free market actors, not the whole public. The realization of necessities of free market economy is more important than public values for IRAs. For example, IRAs can put competition above public interest as a value. Similarly, NPM is bringing the free market values into public space, which threatens to drive out political values altogether. Adams (2000: 498) emphasized that political values have been segregated within public space in the political philosophy of classical liberalism, because they were seen as inconsistent with the free market economic values. Political values were migrating to “private” space in post-war era for public interest and more democratization in society, but now NPM is reversing this process. IRAs are totally excluding politicians from decision-making processes in their regulated sectors.

There is a close relationship between the demands of rising global capitalism, the principles of NPM and the rationale of the emergence of IRAs. Public administration, both in theory and practice, has largely organized itself according to the parameters of capitalism. For example, bureaucracy is announced as the “biggest enemy” today and new approaches in public administration as NPM are trying to bring alternatives to it. On the other hand, it is obvious that capitalism at the turn of the century encouraged the development of bureaucracy. In the 1980s and 1990s, globalization of capitalism is realized and public administration again responded to this development by elaborating new perspectives in which NPM should be located. According to Adams (2000: 499), NPM has become very popular and comprehensive by its success in its responsiveness and adaptation to the current conditions of global capitalism. In that sense, the economic, cultural and epistemological roots of

developing and reproducing capitalism can be useful in understanding the rise and popularity of NPM doctrines.

In globalization, markets became too dynamic that private firms are now acting in consumer-oriented, flexible and integrated global markets. Bureaucratic organizations both in private sector and public sector are now seen as impediments to creativity, flexibility and efficiency. Since bureaucracy is told to be restrictive in nature, it is assumed to be unable to adapt and meet changing demands of global markets and consumers. NPM is trying to create a flexible, creative public sector sensitive to changing demands of markets and consumers. Some examples are its emphasis on outcomes rather than procedural rules, creation of quasi-autonomous public agencies functioning on market values and its enthusiasm for privatization and contracting. IRAs should be evaluated as the second step of NPM project, because they have emerged as a result of similar reasons with NPM. Hence, the need to respond to quick changes and necessities of global markets and creating healthy market spaces for global capitalism are basic reasons underlying the rise of IRAs. IRAs are protecting markets from political interventions and serving the constitution of apolitical markets. Therefore, markets are being regulated not according to the necessities of public interest and welfare of citizens, or even not in guidance of free market economy values but according to interests of global capitalists and corporations. It is NPM which has been the initiator of such a role for government agencies. Adams asserted that

Whether intentional or not, NPM has served the interests of elites, particularly corporate elites, has degraded the ability of governments to address the public interest, and has served as a vehicle for elevating the apolitical governance of free trade and other supranational organizations, which have fully embraced the political philosophy of economic rationalism and new managerialism. (Adams, 2000: 499)

This explanation explicitly points out to the rationale of the emergence of IRAs as a part of NPM reform. Politics was subordinated to economics through public choice theories and today NPM is redefining the role and purpose of government and,

concomitantly, emphasizing the importance of market and instrumental values in ordering our political and social affairs (Ventriss, 2000).

b. Democracy, Accountability, Politics

Zanetti and Adams (2000) argued that the practice of NPM subverts democracy by undermining the social contract and substituting a market mentality with very different normative expectations. Like late modern Hobbesians, the proponents of NPM offer a vision of public service, which is irrelevant to democratic politics and ethics. NPM implicitly accepts that the market becomes the new *Leviathan* that we have no choice but to obey. The values of this sovereign (market) such as competition, exchange values, transaction costs, and survival of the fittest have driven most remaining vestiges of democracy from public sphere. By undertaking the voice of this sovereign in the reformation process of the public sector, NPM is creating the real administrative evil. Following such claims, one may conclude that IRAs are also a part of this mentality, serving the interests of the sovereign (market) as opposed to the popular sovereignty. Popular sovereignty rests solely on legislatures in general, but through IRAs, it is left to the discretion of independent public agencies monitoring the well-functioning of markets. Timney and Kelly (2000) argued that NPM is also a threat to popular sovereignty, since it is supporting privatization and contracting out of public services to private firms, so the focus of public programs are being altered from public policy development to private-profit making. Efficiency and cost-effectiveness of services are being put above the realization of public policy goals. The contractors undertaking public services through NPM reforms are private organizations, so their decisions and policy processes are not open to public. When a public service is contracted out to a private firm, there is no opportunity for popular control over the implementation of the policy or even its goals and purposes. The commoditization of government services by the private sector leads to the replacement of public values of openness, accountability and transparency, by private values of profit maximization and consumerism. Performance-measurement and citizen-orientation are stressed as instruments of accountability to citizens to close the democratic gap of NPM, but

they are not seen as realistic. In that context, IRAs should be seen as the last stage or peak point of the commoditization of public services and of the lack of government control over public policy programs and goals.

IRAs are presented as both regulatory and control organs of markets and consumer interests in the name of public. In addition, IRAs are also accused for having no direct accountability to citizens, so some governance mechanisms are offered to ensure more citizen-participation to public agencies as IRAs. Both NPM and IRAs are seen as movements sacrificing democracy to efficiency and market interests. They are accompanying privatization and contracting out processes, which are distancing administration even further from the public. So, the public aspect of NPM and IRAs will continue to be an open question. Furthermore, some other common problems for public administration theories such as the argument of bureaucratic control versus administrative discretion and the need to achieve a balance between the goals of efficiency and effectiveness as well as of public accountability simultaneously are still remaining unsolved in the assumptions of NPM and IRAs.

c. New Public Management Propositions and Independent Regulatory Agencies

There have been unsuccessful cases of NPM reforms in different countries because of various reasons. According to the advocates of NPM, one of the crucial reasons for unsuccessful examples of NPM reforms is the hesitancy of politicians for delegating authority to managers and applying other necessities of NPM principles because of the fear of losing their control.¹⁴ For this reason, the advocates of NPM may support the establishment of IRAs as new policy-making and executor organs within the public sector. Like privatization, redesigning of public agencies, conditions of public managers and the other mechanisms in public sector could be better achieved in collaboration with IRAs. IRAs are insulated from political intervention and they are supporting the application of managerial principles within the public, private and hybrid organizations. The presidents of IRAs have influential

¹⁴ For details, see: Hood (2000).

powers like the senior managers of NPM. The NPM principles of performance measurement, client-orientation, contract and performance-based employment, mission-orientation, and emphasis on outcomes rather than inputs are being strictly applied in IRAs. IRAs are generally defined as mission-oriented organizations, because of the existence of some pre-described goals, such as competition in market. IRAs see the regulatees in their regulated sectors as customers and produce policies for the betterment of them (customer-orientation). For example, an IRA regulating banking sector should make policies for enhancing competitive relations of public and private banks, thus tries to protect economic and legal rights of both bankers and clients of banks. As a result, the target faction of the IRA of banking is only bankers and bank clients, not all the people while, on the other hand, its policy making authority can affect the whole public.

The principles of NPM are presented as the sole solutions for defined administrative problems, but it is clear that everyone does not have to accept them. Whether the solutions of NPM are useful and true is still an open question. That's mainly because; NPM has its own values and presents them as unquestionable facts. Most of the solutions asserted by NPM have failed in practice. For instance, NPM reforms propose to liberate managers from a 'rules-based, process-driven' style of bureaucracy to a market-oriented one, but in practice, it ended up producing yet more compliance-oriented oversight and regulation over the public service (Hood, 2000: 6). Hood argues that these unsuccessful cases may result in a total failure of NPM policies. Moreover, NPM supports the creation of quasi-autonomous public agencies providing public services on the basis of profit-making, in which responsibility belongs to depended ministry, but managers have full freedom in management within the context of prescribed goals and strategies.

As a part of NPM reforms, policy formulation and service provision have been separated, most of the public services are privatized, contracted out to private firms, or they are designed to be provided by quasi-autonomous public agencies functioning with market values. But there are no institutional or legislative barriers to an incoming government to alter the status of such agencies, or to re-publicize

privatized services, especially in parliamentary democracies. Furthermore, NPM reforms, as a part of neo-liberal policies, put high burdens on people, eliminate social welfare policies and sacrifice the demands of the majority to market values. As a result, IRAs may undertake a crucial role for the protection and continuity of NPM reforms, especially by institutionalizing quasi-autonomous public agencies serving with market values as a necessity of competitive free market and preventing the popular interference of incoming governments to managerial market system established by NPM.

NPM promotes customer-oriented, flexible, decentralized and efficient public agencies, but it has implicitly contributed to the process of privatization, deregulation and marketization of public services. It is one of the core arguments of this thesis that IRAs constitute the most recent point of this process, because deregulation should eventually be followed by re-regulation and privatization should be achieved under the guarantee of control and monitoring of IRAs. Privatization or regulatory authorities of governments cannot be left to political leadership, because elected politicians cannot provide stability in policies. Political governments can be altered by democratic elections and successor political governments can abolish the privatization or market-friendly regulation of previous government, so political authorities are not trustworthy for global investors and capitalists. On the contrary, IRAs can ensure stable, trustworthy market-friendly regulation and can serve like an umbrella for marketization of public sector mechanisms in spite of the opposition of majority.

As stated before, contracting-out is one of the chief characteristics of NPM. It is the basic element of NPM in replacing traditional bureaucracy with market-oriented mechanism. For NPM, it is not enough to import business practices into public sector, but government services should be delivered by business, according to contracts won through competition. The essence of contracting out principle of NPM is that; just as private sector businesses have increasingly chosen to concentrate on their core business and buy in specialist contractors to provide new ideas, more flexibility and a higher level of expertise, so departments and agencies should do the

same. To this end, governments should be responsible for setting policy, and regulating public goods and services, and private contractors should be responsible for the provision of public goods and services. Private and public contractors should compete with each other and those who offer the best combination of quality and price reflecting departmental and agency objectives should be awarded the contract for service provision. The result of this process is a hollow state, a government which regulates markets but does not participate in them, a remnant public service which sets policy but relies on others to deliver the goods (Hughes, 1998). IRAs again emerge as the main public authority of that hollow state regulating markets to calm people that state is still there to protect basic rights and liberties of society.

Decentralization is another important aspect of NPM reforms. Although, NPM takes it as an administrative reform, it is not just a simple administrative reform. It is more importantly a political reform, because, for example, it is being used as a means of transforming the relative power of ministers, local authorities and bureaucratic agencies. NPM reformers have been using decentralization rhetoric prevalently for setting 'delegation of authority' values in all perspectives of society. Devolving the control of agencies to the 'public' through autonomous structures has been a popular slogan in NPM reforms and IRAs can be seen as a part of these reforms, because they are autonomous public organizations making regulation and control in different economic and societal sectors on behalf of general public and they have changed power relations both in state and society.

d. Redefinition of Politics

NPM reforms show a great variety because since they are serving neo-liberal ideology in their roots, they are affected from many different theoretical and practical perspectives as argued before. Various and reproducing necessities of neo-liberal ideology and global capitalism are being applied under the general context of NPM movement, it cannot be seen as a sole management reform. NPM is often used to redefine politics rather than simply improve state management within current structures. NPM proposals have influential political, economic and social

repercussions. For instance, an important characteristic of NPM is that responsibility is given to managers for the achievement of results. This means that the relationship between managers and politicians and managers and the public must change (Hughes: 1998: 68-70). In the traditional model, the relationship with the political leadership was narrow and technical, politicians were giving orders and public servants were carrying them out. Under the NPM model, the relationship between politician and manager is more fluid and is closer than before. Public managers are now enjoying freedom to choose and freedom to manage and accounted as responsible for results. A direct accountability is established between public managers and citizens through client-oriented administration and service. This may be interpreted, in a sense, as the acceptance that politics and administration cannot be separated in reality. Perhaps, the separation of policy-making from administration in traditional model was unrealistic and NPM implicitly accepted this reality and tried to transcend it through effective and responsible managers. An effective manager could be a bureaucratic politician or a good political player at the same time. The presidents or council of executives in IRAs would be given as a good example to bureaucratic politicians, because they are formulating policies in their regulated sectors, implementing them and holding accountability directly to consumers and producers of the regulated market. IRAs will emerge as new political actors serving to managerial principles and market interests. Then, NPM can see these new political actors as efficient and effective.

e. Redefinition of the Role of Government

There is a convergence between NPM and IRAs about the definition of the proper structure and functions of the governments. Both of them assume a small, less-costly, but more effective state. Rhodes argues that NPM reflects a fundamental change in the way governments govern, especially by its emphasis on

...performance appraisal and efficiency; the disaggregation of public bureaucracies into agencies which deal with each other on a user-pay basis; the use of quasi-markets and contracting out to foster competition; cost-cutting; and a

style of management which emphasizes, amongst other things, output targets, limited term contracts, monetary targets and incentives, and freedom to manage. (Rhodes, 1991: 11)

If the proponents of NPM are right, we are moving inexorably into a world of post-bureaucratic, post-modern or post-industrial government as Lynn argued (1998: 109) and the development of IRAs can be interpreted as institutionalization of this new vision of state. IRAs are seen as instruments of a small, cost-effective, flexible and market-friendly regulatory state. In a chained process, public choice theory, NPM and IRAs can be seen as overlapping steps of destruction of welfare state understanding. They all critically discard the redistributive and regulatory (in traditional sense) policies of post-war welfare state. Lane (2000) sees NPM as a single, coherent theory of public sector management and claims that NPM is proving superiority to traditional public governance theories, because it has the advantage of being applied to not only public service provision, but also to redistribution and regulation. He emphasizes the critical role of NPM reforms in repelling the policies of welfare state, especially through contracting out of public services. According to him, there are two potential weaknesses in contracting regimes in the public sector. The first is that what the government and CEO (chief manager of contractor private organization) agree is optimal may not be so for the public (because, government and managers will give priority to market interests) and the second is that there is no organizational regime that rules out reneging process. As a proponent of NPM, Lane clearly points to the necessity of IRAs as a complementary of NPM reforms, especially for providing an institutional framework, in which market-oriented policies of public agencies ignoring public interests can be protected from political demands of majority. The emergence of regulatory agencies combining aspects of private and public law is seen as essential for guaranteeing competition and contracting out in public services. IRAs can rule out the reneging process of redistribution and traditional interventionist regulation.

There are various theoretical roots effecting NPM, most of which also inspired IRAs, both in theory and practice. For example, public choice theory or neo-liberal

economics have inspired both NPM and the establishment of IRAs. Public choice theory adapted economic-based theories to the interpretation of politics and bureaucracy, while NPM tried to create a new public sector management based on foresees of economic-based theories as public choice theory. NPM and public choice theory contradicted in some points, overlapped in some others, but it is obvious that IRAs based on similar economic theories have become functional for providing an umbrella for the realization of principles of both NPM and public choice theory. NPM was a necessary step, especially after the assumptions of public choice theory about public sector failure. It aimed at carrying the negative and cynical context of public sector, which was produced by public choice theory into a positive context by redesigning it. NPM has provided a roadmap for public agencies to be efficient, effective, and responsive to changes around. The most important components of the NPM appear to be a stress on transposing private sector methods of management practice into public administration, a shift to greater competition and marketization in the public sector, polycentricism in public sector design, greater emphasis on delegation of authority and managerial autonomy of agencies, bringing explicit standards and measures of performance for agencies and personnel, and favor of a less-costly, but effective minimal state. NPM has also been a practical and managerial response to the debates about the role of state in the economy. NPM has refused the welfare state policies of redistribution, it has supported the transfer of provision all possible public services to market and has exalted the market system and values as valid in all perspectives of society.

To sum up, IRAs as market-friendly and non-majoritarian public institutions are a natural consequence of policies of NPM. They have emerged from similar theoretical origins and practical factors and envisioned a new role for governments. ‘Businesslike government’ is the motto of both NPM and IRAs. NPM has projected that state should be a minimalist regulator of market systems (Gray and Jerkins, 1995: 84) and IRAs have emerged as actors of such a state regulating the markets in compliance with market values. NPM reforms seek to reconfigure the relations between states, markets, and societies by giving prominence to market forces and managerial efficiency. As a result of NPM reforms within the public sector, the

emphasis on competition and marketization has improved and IRAs came into agenda. As Thatcher (2002: 138-9) has asserted, as the doctrines of NPM are increasing, the number and functions of IRAs are increasing correspondingly.

CHAPTER 5

GOVERNANCE APPROACH AND INDEPENDENT REGULATORY AGENCIES

Governance has emerged as a popular concept in the 1990s and has been widely-used by different disciplines and institutions. Governance as an approach comprises many different theoretical perspectives and through different combinations of those various perspectives, distinctive conceptualizations are emerging. The origin and the theoretical and institutional backgrounds of governance are also subject to a huge, complex and complicated debate. As far as the focus of the thesis is concerned, in that chapter the probable implications of the governance approach for the economic, political and administrative governing processes, its relationship with neo-liberal approach and its effects on the evolution and development of IRAs will be discussed.

5.1. THE DEFINITION OF GOVERNANCE

Governance is a multifaceted concept and it has economical, political, social and cultural dimensions. There are various usages of governance in the related literature that it can be associated with many concepts to define a new type of governing or organization or process. Some examples could be given such as economic governance, administrative governance, political governance, corporate governance, public sector governance, democratic governance, systemic governance, environmental governance, global governance, local governance, electronic governance, systemic governance, network governance and the like. Such a rich diversity of concepts and meanings results in the fact that there emerges an ambiguity about the proper definition of the term ‘governance’.

Rhodes (2000: 55-63) has found out at least seven separate uses of governance relevant to the study of public administration: corporate governance; the new public management; 'good governance'; international interdependence; socio-cybernetic systems; the new political economy; and networks. Corporate governance is about systems by which organizations can be directed and controlled. International interdependence is about the erosion of state authority as a result of the internalization of production and financial transactions, growing importance of international organizations, international law, and development of hegemonic powers and hegemonic blocks. The state has to increase its capacity to respond to this interdependence. Governance as socio-cybernetic system implies the emergence of new patterns of relationship between state and society and essential changes within the political and administrative system, which means that central government will no longer be the sole supreme authority. Governance as the new political economy examines the interrelationship between civil society, state and market economy in a broader and systemic theoretical framework and searches for finding mechanisms to solve the intensified complexity of growing economic, social and political problems. Governance as networks implies managing networks. Several interdependent actors are involved in the provision and delivery of public services today and there is need to steer their network. In the chapter I will examine governance as 'new public management' and as 'good governance' in detail later, because their implications are more relevant for the analysis of IRAs.

In general, governance can be defined as "new patterns of interaction between government and society" that comprises co-steering, co-managing, co-producing, co-regulating and co-allocating (Kooiman, 1993: 1-2). This "co" prefix usually means that governance models should include many actors in society to policy-making and implementation processes. Governance, by definition, involves the establishment of accountable, transparent and open governing models including societal actors as representatives of state, capital, labor, non-governmental organizations (NGOs) and other civil society associations. It also implies an enabler state for market and a well-managed economy.

The new role of the state within the governance context can be named as managing, steering or guiding, but what is important is that the emphasis is on the bilateral or even multilateral aspects of governing. It encompasses all kind of active interactions such as political, economic, social, and cultural interactions between state and society. As Rhodes (1996) states, governance, in general, implies “a change in the meaning of government, referring to a new process of governing, or a changed condition of ordered rule, or the new method by which society is governed.” It is this definition that will be a guide for analyzing the different modes of governance, why they have emerged and what they are serving for.

5.2. A SURVEY ON THE EMERGENCE AND THE CONTENT OF GOVERNANCE APPROACH

The origins of governance can be analyzed at two levels; institutional level and theoretical level (Aygül, 1997). The institutional level encompasses the governance perspective of the World Bank (WB) and the Western countries. WB used the term ‘governance’ firstly in its report of “Sub-Saharan Africa from Crisis to Sustainable Growth” (1989). In that report, WB analyzed the problems stemming from the implementation of the structural adjustment policies in African countries and pointed out to the internal political and bureaucratic factors as responsible for these problems and deficiencies. WB defined those problems as a crisis of governance that emerged from corrupt politics and administration and argued that there was a legitimacy problem in examined African countries caused by the arbitrary and coercive structure of political and bureaucratic spheres. WB proposed the establishment of pluralistic administrative structures, implementation of managerial reforms for efficiency and effectiveness. It also emphasized the need to develop participation, accountability, transparency, and human rights for more legitimacy both in political, administrative and societal spheres. It is this analysis and proposals that have shaped the main dimensions of governance as a new model for governing of societies. The governance approach has been widely used by WB and some other international organizations such as International Monetary Fund (IMF), United Nations (UN),

European Union (EU), and Organization for Economic Co-Operation and Development (OECD) during the 1990s, not only for proposing an administrative and managerial reform, but also for integrating the basic neo-liberal reforms and principles of market theory into the political and economic structures of developing countries. Such policies have been presented as the only solution to these countries for economic growth and development and in order to overcome their debt crisis.

The governance perspective of the western countries is generally political and economic in content. On the one hand, it includes the development of democracy, human rights and civil society, but on the other hand it is considered as an instrument for economic liberalization and growth under the light of neo-liberal tenets. It promotes a small and effective state providing the necessities of market economy and tries to integrate society to this new process by its emphasis on transparency, accountability and participation.

The theoretical roots of governance may be traced back to many different perspectives. One may say that governance literature has inspired from the assumptions of institutional economics, transaction-cost, new public management, public choice theory, communication theory, theories of networks, system theory and even the pluralist theory of state.

The emergence or the re-emergence of the term ‘governance’ coincides with a specific phase of the neo-liberal climate. Governance emerged as a new reform process after many neo-liberal reforms in economic, social, political and management issues. The process and consequences of globalization, liberalization, deregulation, privatization movements, and the new public management reforms can be accounted as both the basic factors behind the emergence of governance approach and the complements of the different governance models which came into being in the 1990s.

According to Pierre (2000a: 2), as a result of the neo-liberal policies, one has witnessed a process of the “hollowing out of the state”, decreasing legitimacy for collective solutions, and the marketization of the public sector. Neo-liberal policies have put high burdens on masses in countries where they were implemented. The traditional political and administrative mechanisms and the traditional democratic measures were eroded due to the implementation of such policies. Consequently, the power, role, policy capacity, institutional capabilities and legitimacy of new government structures that have emerged as a result of neo-liberal reforms were highly criticized. As an outcome of these criticisms, the governance approach became popular with its redefinition and reshaping of the relations between the state, market and society.

The governance approach has redefined the role of the state in society and emphasized the importance of state capacity for the well-being of markets and society. The ‘governmental failure’ thesis of the public choice theory has been effective in the emergence of new governance structures for increasing the capability of state to deliver public services efficiently. As in system theory, the governance model assumes a state interacting with its external environment continuously in making decisions. It supports public-private partnerships in delivery of services and promotes civil society associations and NGOs to take place in the decision-making process on public issues. Since the role of the state has been diminished as a result of privatization and marketization policies, and many of its social functions were abolished, this new model tried to build up a bridge between market economy, state and society by supporting the participation of civil society associations to both service provisions and policy-making processes. Its stresses on accountability, openness and transparency are for ensuring the involvement of interest groups, NGOs or other civil associations into policy-making and implementation. However, whether these assumptions of the governance imply a distinction from the neo-liberal context or they are a new face of the neo-liberal discourse is open to debate, a point which will be discussed later.

5.3. GOVERNANCE AS ‘GOOD GOVERNANCE’ AND INDEPENDENT REGULATORY AGENCIES

Good governance implies a ‘market friendly’ state that regulates the market within the guidance of the market theory. Good governance aims at creating an efficient and managerial state that is providing the conditions for the well-functioning of the market and achieving to gain the support of the ‘civil society’ for such neo-liberal reforms at the same time. The basic difference of ‘good governance’ from governance is that it is a specifically initiated governance package of the economic and institutional measures by the WB for especially the Third World countries to adjust their political, administrative and economic systems to the necessities of the market economy, global capitalism and liberal democracy. Sometimes ‘good governance’ and governance may be used interchangeably.

5.3.1. GOOD GOVERNANCE APPROACH

Good governance has emerged as an important reform policy that is initiated by the WB and supported by other international agencies and western governments. The WB (1992) has been a leading advocate of the good governance approach in 1990s. It set various stipulations for providing loans in order to make good governance be accepted in the Third World countries; published and disseminated reports, bulletins and even academic papers to instill the good governance idea in the social, political, economic and academic agenda. The motivation behind this resides in the fact that in the 1990s WB, which supported the neo-liberal policies, privatization, deregulation, as well as the idea of a self-regulating market and a minimal state, recognized and acknowledged that a self-regulating market was not realizable and state capacity was important for the market and society. That is why it has developed the idea of a market-friendly state under the rubric of good governance.

The basic premises of WB’s good governance model were political liberalization, administrative decentralization, reduction of bureaucratic controls, and development of a managerial and market-friendly state. Also included were the establishments of

accountable, democratic, participatory and open interactive administrative systems. WB presented good governance model as an instrument for especially the Third world countries to transcend the problems that they faced during the application of the neo-liberal reforms. Good governance approach was presented as a solution for reforming the corrupt political and administrative structures of the countries in order to achieve more economic growth and development. Although good governance approach was included democratic and more capable state assumptions, it had the neo-liberal philosophy in its essence such as the themes of more marketization and managerialism. As Leftwich (1994: 365-6) argued, good governance aimed at adapting the Third World countries to the principles of liberal democracy and neo-liberal policies under the catchwords of sound administration and democratization. The structural adjustment reforms in developing countries basically serve to such neo-liberal aims of good governance in reality. Good governance has become popular even in the developed countries with its stress on participation, accountability, openness, and human rights within the neo-liberal economy and management context for gaining more support of the civil society for the maintenance of the neo-liberal reforms.

That picture depicted above shows that, it would not be wrong to argue that good governance turned out to be a new policy framework for legitimizing the neo-liberal policies. In fact good governance approach is in compliance with the neo-liberal tenets. It encompasses a change in the role of government from the interventionist state to regulatory state, ascribing more tasks and responsibilities to the private sector and reigning state from production and trade through more contracting-out and privatization, and the delegation of power from centre to lower levels of government (WB, 1992: 5). It emphasizes a small and effective state providing the necessities of the market economy and tries to integrate society to this new process by its emphasis on transparency, accountability and participation.

5.3.2. GOOD GOVERNANCE AND INDEPENDENT REGULATORY AGENCIES

According to Hirst,

Development economists came to recognize that institutions matter, that development is not just a matter of creating free markets, promoting investment, and adopting the right macro-economic policies... Good governance, therefore, means creating an effective political framework conducive to private economic action—stable regimes, the rule of law, efficient state administration adapted to the roles that governments can actually perform, and a strong civil society independent of the state. Democracy is valuable in this context if it provides legitimization for good governance. Multi-party competition and free election are valuable in preventing cronyism and corruption, and in building public support for development strategies, but only if parties eschew extremism and play the political game by the appropriate liberal rules. (Hirst, 2000: 14).

As can be observed, extreme neo-liberal ideas such as the minimal state and self-regulating markets did not solve societal problems, but they increased the burdens on the masses. A small, but more effective state is seen as important for the maintenance of a competitive market and responding to global challenges of capitalism. This state should be able to gain the support of the civil society. Therefore, good governance emerged with stresses on accountability, democratization and participation, but it favored market economy and neo-liberal principles in its essence as well.

What is the relevance of this discussion for IRAs? As can be remembered the neo-liberal policy making actors are IRAs in the 1990s for regulating markets. They are independent from direct democratic rule, so become the direct enemy target for the opponents of neo-liberalism because they are institutionalizing and fiercely implementing neo-liberal reforms without taking into account the social needs and demands of the majority of population. Therefore, in order to solve the legitimacy problems of the IRAs, these institutions are presented as accountable, transparent, participatory *governance* institutions. But within the good governance context,

democracy is not dissociated from neo-liberalism, in other words, it is considered to be as a necessary value for public administration only if it is in compliance with the neo-liberal principles.

Good governance approach talks about democratization and sound administration, but in reality it distrusts democratic political actors and traditional bureaucracies. WB's report of *Sub-Saharan Africa from Crisis to Sustainable Growth* (1989), clearly accuses local internal political and bureaucratic structures for the tensions emerged after the application of the neo-liberal policies. Hence, good governance approach proposes the application of market economy and managerial reforms; creation of a small and less costly state; and marketization of public services as much as possible. The final point of these policies is the establishment of IRAs as market-friendly public organizations insulated from the direct control of elected officials and from the effect of traditional bureaucratic structures. The basic stresses both in governance model and IRAs are to support market economy and to realize accountability, transparency, and openness in public management.

The role of the state within the framework of good governance was defined in the World Development Report of 1997 (WB, 1997) as "an effective state, which encourages and complements the activities of private business and individuals". The state should be small again; there should be less public sector and more marketization and state should act as a catalyst and facilitator for well-functioning of market economy. Such a model is constituted by the establishment of IRAs as main policy-making organs for the regulation of the market economy.

IMF is another effective institution supporting the good governance approach. The IMF's report of *Good Governance* (1997a: iv) mentions that the main aspects of good governance are the transparency of government accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity. For IMF, good governance is important for countries at all stages of development and so it is providing advice and technical assistance to foster good governance, such as promoting the public sector

transparency and accountability. IMF (1997b) sees a secure economic environment as critical to sustained growth in a market economy, so gives importance to existence of institutions providing credible, predictable, stable economic environment and policies in member countries. The development of such institutions in the national economies under the heading of good governance is a crucial policy goal of IMF today and what is meant from such institutions is the emergence of IRAs for the maintenance of a transparent and stable economic and regulatory environment conducive to efficient private sector activities (IMF, 1997a: 4).

To sum up, good governance usually advocates liberalization, marketization of public services through privatization and contracting-out, putting private sector ascendant to public sector, breaking down the power of the traditional bureaucracy, reforming civil service by managerial principles, decentralizing administration, and excluding majoritarian policy-making from democratic administration understanding. Good governance approach encourages competition and market economy for economic growth and development. It mainly deals with the creation of accountable, transparent, open and participatory institutions that will serve for the realization of a self-regulating market and will share policy-making process more with societal actors such as NGOs. IRAs are the main policy-making institutions which apply the governance model both by their emphasis on transparent and accountable regulation and by allowing participation to their customers into the decision-making process about the regulated sector.

5.4. GOVERNANCE AS NEW PUBLIC MANAGEMENT AND INDEPENDENT REGULATORY AGENCIES

New Public Management (NPM) brings about the application of all private sector management methods to the public sector and emphasizes performance-measurement, customer-orientation, and marketization of public services through contracting-out, privatization and quasi-markets. NPM defines the role of the state as 'steering' rather than 'rowing'. Rhodes (2000: 56) argues that one of the meanings attached to the governance is new public management, because steering is central to

analysis of new public management and steering is a synonym for governance. Osborne and Gaebler (1992; cited in Rhodes, 2000: 56) talk about the transformation of bureaucratic government to entrepreneurial government stressing competition, markets, customers and outcomes and define this transformation as “less government” (or less rowing) but “more governance” (or more steering). IRAs are effective policy makers and executors of such a steering state, so they are the basic actors of the governance model as well.

The theoretical sources of the new public management such as managerialism, new institutional economics and transaction-cost theory are also sources of inspiration for the governance approach. Governance approach has especially benefited from the policies proposed by managerialism for the public sector and the ideas of the new institutional economics for bringing incentive structures (such as market competition) into the public service provision.

Hirst (2000) is another author who establishes a close relationship between the basic premises of governance and new public management. He argues that governance is related to the growth of new public management strategies since the early 1980s. As a part of new public management reforms, firstly, privatization of public enterprises and public services accelerated and there arose a need for “regulating service providers to ensure service quality and compliance with contractual terms” (Hirst, 2000: 18). Secondly, following the introduction of the commercial practices and management styles within the public sector, public services are devolved to agencies that are self-managing within overall policy guidelines and service targets. As a result of these reforms, the traditional model of provision of public services under the direct hierarchical control of elected politicians changed and a new model of administration emerged in which service providers are seeing their consumers as not citizens but customers. The name of this model is governance and IRAs are main actors of this new modeling.

5.5. GOVERNANCE AND NEO-LIBERALISM

The assumptions and results of neo-liberal policies have an important effect on the revival of governance approach in the 1990s. Neo-liberal policies have created severe social and economic problems and they could not solve the problems that were indicated at the beginning: The self-regulating economy has not been functioning well, there were still high unemployment rates, high inflation rates; greater social injures and not a real economic growth or development. Traditional state structures have been dismantled, most of the social policies have been abolished, and most of public services have been privatized. Moreover transnational capital flows penetrated into the developing countries as a result of globalization, deregulation, and liberalization policies and they were determining the conditions of the economy and the agenda of politics in national contexts *vis-à-vis* international agencies such as the WB, the World Trade Organization (WTO), and the IMF and so on. The Third World countries such as Argentina, Brazil, Chile have tried to apply many neo-liberal policies under the rubric of structural adjustment programs in order to overcome their debt crisis and to succeed economic growth and development, but their conditions have gotten worse in the 1990s. States had to reduce tax rates, sold public enterprises as a part of neo-liberal reforms, but they could not give up some of their traditional functions such as education, military, health, infrastructure, and social security functions. States' expenditures have grown, but revenues have fallen, so their debt crisis has severed. A 'problem of ungovernability' because of the increased demands and lesser revenues has emerged again in the 1990s. Elected officials could not respond to the demands of their citizens, but have become followers of neo-liberal policies in order to be eligible for more credit from the international agencies and developed countries. As a result, neo-liberalism has faced serious legitimization and ungovernability problems and the reactions against global capitalism and neo-liberal prescriptions have increased enormously. Moreover, neo-liberalism could also not achieve the realization of a minimal state in many countries, because welfare states were so big, and the governments could not risk a decrease in the public sector and social policies, by fear of losing electoral support.

In such a pessimistic environment, governance has emerged or re-emerged with new commitments for changing the state-market and state-society relations. It assumed that the state should not be disengaged from the economy totally, but its role should be changed from a planning one to an enabler one. Governance accepts the assumptions of the public choice theory that traditional state structures are limited, personalized and incapable of responding to new conditions of global economy and complex web of modern societies. Governance proposes the application of new public management reforms for efficient and effective administration and finds neo-liberal economics as rational. It supports the marketization of public services through more privatization and contracting-out and gives priority to private organizations in provision and delivery of services. In fact, these are the basic premises of the neo-liberalism as well. Yet, distinctively, governance emphasizes more the participatory interactive relations between state, capital, labor, non-governmental organizations (NGOs) and other civil society associations. It gives importance to accountability, transparency and legitimacy in the decision-making process and tries to integrate more societal actors to public policy making. On the other hand, it defines the role of its effective and more capable state as a facilitator for the self-functioning of market within the neo-liberal context.

The relationship of governance and neo-liberalism is an interesting one to examine. Governance has emerged with concepts as democratic participation, civil society, transparency, accountability and effective state and sound administration. It seems to accept economic, political and administrative problems that emerged as the consequences of the neo-liberal reforms in the 1980s and tries to solve such problems by more democratization and sound administration. From this perspective, governance seems to imply a totally different framework from the neo-liberal agenda and it is being presented as a new policy discourse. On the other hand, a deeper analysis on governance indicates that the basic governance practices are in fact not diverting from but reflecting the principles of the neo-liberal policies. In fact, there is a great parallelism between the core ideas of governance approach and the basic tenets of neo-liberal discourse. The emphasis on democratic participation, civil society can be taken as controversial to the neo-liberal discourse, but they are not

values in themselves in governance, they are defined in compliance with the market economy and the necessities of the neo-liberal framework. They are announced as necessary for perfectly functioning competitive free market. Democratic choices are welcomed by governance, but as long as they are institutionalizing the neo-liberal policies. Aygöl (1997) has examined the relationship between governance and neo-liberalism and concluded that governance has emerged to replace the extreme sides of neo-liberalism, which were subject to serious legitimization problems due to their policies. Aygöl has added that “governance is both a continuation and overhaul of neo-liberalism” (1997: 89). Governance approach, in general, supports the main tenets of neo-liberalism such as market economy, privatization, globalization, transformation of traditional political and administrative mechanisms, and marketization of public services. It talks about a more capable state, but this is not an interventionist state, rather an enabler state contributing to the maintenance of a competitive free market economy, and it is a small state sharing its policy making authority with other societal actors. Moreover, even some authors such as Güler (2003) claim that although governance is presented as an instrument of participatory democracy or public-private partnership, it is not enhancing the participation of labor unions or other organized democratic units in policy making processes actually, but is serving as a tool for delegating all the authority of policy-making to the capitalist classes.

To sum up, the core ideas of governance might be summarized as a competitive market economy, a well-managed state and a democratic civil society. Following the governance practices and the meanings attached to such concepts in the governance literature, it is possible to conclude that the core ideas of governance are in a great harmony with the neo-liberal discourse, very similarly to the close relationship between IRAs and neo-liberalism.

5.6. GOVERNANCE AND INDEPENDENT REGULATORY AGENCIES: A GENERAL EVALUATION

There is a close relationship between governance approach and the emergence and institutional design of the IRAs. When one examines the different governance proposals, one may conclude that it is a collection of different policies for realization of a good economic and political management on the basis of the market theory within the era of globalization, and IRAs are an important part of these policies as the new main actors of this new political management for a better market economy.

According to Leftwich (1994: 370), governance has systemic, political and administrative implications. Systemically, it implies a change in the traditional governing structure and proposes the inclusion of new actors into decision-making processes. This process comprises a looser or wider distribution of both the internal and external political and economic powers to new actors. Politically, it implies the participation of all citizens to the governing process at all levels of administration in order to solve the legitimacy crisis. It means the emergence of a liberal state based on a pluralistic polity. Administratively, it necessitates the establishment of an independent, open, efficient and accountable administration. When this framework is adapted to the neo-liberal principles, IRAs seem to be the basic administrative and political organs having capacity to provide all the necessities of such a governance model.

Governance approach has a specific emphasis on the necessity of an effective, democratic, cooperative state enabling different societal associations such as representatives of capital, labor, non-governmental organizations (NGOs), and other voluntary organizations to participate in public policy-making and implementation process. Some of its arguments may seem to be controversial with the extreme neo-liberal proposals such as minimal state and a self-regulating market. It is true that revival of governance approach in 1990s are due to the negative consequences of the extreme neo-liberal reforms in 1980s, but it is rather a reproduction and continuation

of the neo-liberal discourse than a new discourse undermining the basic neo-liberal principles.

The extreme neo-liberal reforms in the 1980s held post-2nd World War institutions and values as responsible from the ‘ungovernability crisis’ and economic deflation in 1970s and obliterated political and administrative institutions, the rule of law principle, social and moral values and relationships. They distrusted democratic election systems and the democratic political authorities and their bureaucracy about policy-making and implementation. They aimed at creating a minimal state providing law and order and a self-regulating market economy. An amazing process of privatization, deregulation, economic liberalization and marketization of public services was witnessed in many countries. These extreme neo-liberal policies resulted in high social and economic tensions. Therefore there was an emphasis on family ties to restore societal unity or emphasis on law and order function of the state to avoid extreme diversions and divisions in society (Aksoy, 1995), but these were not enough to restore the social, political and economic strains resulted from application of such neo-liberal policies. Neo-liberal policies have created great problems in 1990s, because, first of all, the state was necessary for the market and the reproduction of capitalism; secondly, institutions, democratic rule, and social values were important for a good society and economy. As a result, good governance approach emerged with specific stresses on the rule of law, the importance of political and economic institutions, the setting up societal unity by enhanced democracy, participation, and accountable public authorities. On the other hand, it has favored neo-liberal policies as well, so it aimed at creating its own institutions serving to neo-liberal policies on the one hand; showing an accountable, transparent and participative administration image on the other. Governance has highlighted the importance of the state, but proposed the creation of a state not directly intervening to market, but enabling the maintenance of the market and development of private organizations as basic market actors. The consequence of such a search was the invention of IRAs that would be insulated from politicians and traditional bureaucracy. IRAs emerged as new public policy structures that are providing well-functioning of markets on the basis of market principles and participating the

members of regulated sectors and the voluntary organizations related to that sector to decision-making process about the market.

Governance approach has been initiated, supported and extended by developed countries and international organizations such as the WB, IMF and the United Nations (UN). They have presented new neo-liberal policies as ‘market-friendly state’, more privatization and marketization of public services, market economy based on monetary policy, abolition of all trade restrictions for global capital, and creation of stable enabler authorities for national markets under the rubric of governance package with the label of sound administration, democratization and a well-managed economy on it. Their governance package was distrustful to elected officials, so it was also including the establishment of the IRAs to regulate market, which was urged as a *sine qua non* condition for the creation of credible and stable market conditions in order to draw more foreign capital into national markets. The WB and IMF have occupied a leading role in enforcing these governance policies to the Third World countries such as Turkey, countries of Latin America and South Africa by putting conditions for the exchange of loans provided. These countries usually applied these governance policies under the name of ‘structural adjustment reforms in economic, political and administrative sphere’ and advocated them to their societies as necessities of the global economy and conditions in order to achieve economic growth and development. WB and IMF have favored the application of governance practices by through corporations and regulatory agencies strictly in their organizations and functioning principles to be successful in enhancing the profitability and desirability within the markets. For instance, IMF argued that instilling and using sound governance practices is a shared responsibility for market participants and regulatory agencies. This responsibility has three components. The first component is that, the market participants must bear the ultimate responsibility for the establishment of good governance practices in their institutions in order to gain and keep the confidence of their clients, counterparties, and the markets. Secondly regulatory agencies must play a key role in instilling and overseeing implementation of such good governance practices. Finally, regulatory agencies themselves need to establish and operate sound governance practices. If regulatory

agencies fail to apply good governance principles, they will lose their credibility and moral authority to promulgate good practices in the institutions under their oversight. (IMF, 2002: 5).

The stress of governance on accountability, transparency, democratic and participative governing model based on collaboration between state and other actors of society in policy-making and implementation encompasses a different meaning from the traditional models in which elected politicians were the final policy-makers and the bureaucracy was serving for the implementation of the decisions of elected politicians. Moreover in this traditional model, ministers as elected politicians were hierarchical superiors of the bureaucrats and were responsible for the implementation and consequences of public policies. Therefore, there was a clear direct accountability to people, at least procedurally in the traditional system. Today, IRAs emerged as main policy-making organs, they are insulated from direct democratic control and they have important powers for implementing public policies on behalf of people. Therefore, there arises a problem of legitimacy about these agencies. Governance model assumes that customer-oriented, transparent, and open policy making structures as IRAs are legitimate, because they are responsible for their outcomes, and they take into account the opinions of NGOs, of the members of the private sector as well as those of the labor organizations into the policy-making process. For instance, in many countries including Turkey; the representatives of capital and labor organizations, and NGOs are also nominating candidates for the management of IRAs and their representatives are taking place in the administration cadres of IRAs together with members of state. This collaborative picture of the IRAs is presented as the real democracy and accountability by the governance approach so IRAs are announced as legitimate.

Yet such arguments face with many objections and criticisms. Questions such as whether or not all of the representatives of each organization are taking place in the decision-making authority in equal conditions, whether or not all the members of the society are represented and their rights are protected: whether IRAs are serving to their customers solely or to all the citizens are not easily answered by the governance

approach, yet they constitute serious challenges against the model. When one examines the governance model which forms the organizational structure and decision-making model of the IRAs today, one may conclude that the scope of democratic decisions seems to be limited by the needs and expectations of the markets within this model. Some scholars like Güler (2003) even assert that the participative model of governance is an illusion, because, in reality, governance is a model carrying all the public authority under the control of the capitalist class. Most of the proponents of IRA model implicitly accept the existence of a democratic deficit in IRAs in the traditional sense and they claim that the accountable, transparent and participative institutional design of IRAs and their success in the regulation of markets within the context of market principles will increase their credibility and legitimacy in the long-run in the eyes of people. For example, Ali İhsan Karacan (2002: 37), the ex-president of Capital Market Board (An IRA regulating capital market) in Turkey between 1994-1997, also an academic, suggested that IRAs should be very successful in regulating market and should be transparent and accountable in their governing system to gain more independence and legitimacy in the long-run.

IRAs emerged as the main state organs regulating a great deal of public policy areas in today's politics. They have a strong authority including legislative, executive and almost judicial powers in their regulated areas. As a result, their existence may be seen as controversial to neo-liberalism and governance approach. Similar criticisms were also made against governance approach that it was interpreted as a reaction to neo-liberalism. Governance is a complex and wide-range approach that includes many different social, cultural and political aspects and it has important stresses on democratization, participation and state capacity for fixing market failures. Neo-liberal discourse, in general, does not accept the existence of market failures and it discredits the rule of the elected majoritarian officials or traditional bureaucracy. It rejects the idea of a public interest in the traditional sense and proposes to bring private sector management mechanisms to the public sector and to minimize the public sector as much as possible by ascribing the provision of services to the private sector through privatization and contracting out. New public management reforms

have fragmented public service delivery by drawing in actors from the public, private, and voluntary sectors. So, governance can be seen as a reaction to neo-liberalism that emerged especially as a response to the failure of neo-liberal marketization policies. For instance, Aygül (1997) argues that all of the different governance perspectives emerged as a reaction to the failures of neo-liberalism, because the neo-liberal policies of 1980s were unsuccessful, they could not solve any of the problems they addressed such as inflation, growth, and development and they encountered a serious legitimization problem in front of the society. Neo-liberal discourse also contrasted the governance tenets which stresses the importance of networks, politics, administration, civil society and democratization. From such a perspective, similar interpretations would be made against IRAs as well that they are a return-back to post-war regulatory state, because they are functioning to regulate markets, avoid market failures such as natural monopoly. Moreover the establishment of IRAs coincides especially in developing countries with financial, social or political crises and scandals emerged as a result of applied neo-liberal policies.

On the other hand, as the discussion in that chapter reveals, the basic aims of the governance approach and the functioning principles of IRAs are similar and they do not have a contrast with neo-liberal principles. Their emergence should be debated as a new phase of the reproduction of the neo-liberal tenets and capitalism that is still carrying the ascendancy of market theory and liberalism in its essence. That is, governance has not emerged to provide alternatives to neo-liberal policies and aims, but to reproduce them with new slogans as democratization, participation, accountability, transparency or public-private partnership. However, instead of giving credit to the ready-made slogans, a deeper analysis might indicate that the governance approach encompasses the use of markets and quasi-markets to deliver public services, a small and less costly state, new public management reforms as creation of a steering entrepreneurial government, budget constraints, managerial civil service reforms, customer-based and result-oriented institutional structures and in addition emergence of new political and administrative authorities providing a participative environment for civil society to take a part in decision-making

processes. The organization and role of the IRAs are constituted under the leading light of the governance literature. Within the framework of the governance model, IRAs have developed as main policy-making organs applying the participatory and accountable model of governance within their regulated sectors both with their structures, functions and contributions of their regulatees.

International agencies such as WB and IMF accused local politicians and bureaucracy for financial crises emerged as a result of neo-liberal economic policies in 1990s. They emphasized that neo-liberalism includes political and administrative adjustment reforms as well as economic reforms and they added that the economic reforms of neo-liberalism were applied by many countries in the 1980s, but those economic reforms were not complemented by the necessary political and administrative reforms, so the crises emerged. Following these assertions, it is possible to derive the conclusion that the emergence of the IRAs in the 1990s, especially after the financial crises, is a part political and administrative reform complementing the economic reforms of neo-liberalism.

The story of the neo-liberalism in the 1980s can be summarized as the story of the triumph of corporate management and marketization over bureaucracy and commonality. On the other hand, as Rhodes argued (2000: 64-6), it is a story which ignores the need for the negotiation in and between networks. Governance has emerged with its emphasis on networks and has provided a different story and language to marketization and therefore underlined the necessity of developing alternative steering strategies. State capacity is still very important for markets. As Gamble argued,

In the last thirty years of twentieth century, however, the assumption that state had a major direct role to play in economic governance was challenged, and the importance of other forms of governance, particularly self-governing markets, but also the corporate hierarchies of transnational companies as well as networks and policy communities became the focus of attention. The state has in some areas disengaged from the economy, but it remains a key player in

economic governance. Its role has in some cases altered, with greater emphasis being placed on regulation than on administration. De-regulation has therefore often been a misleading term. A more accurate term is re-regulation, because the disengagement of the state from direct administrative responsibility for certain economic functions has often been accompanied by an increase in its regulatory responsibilities. (Gamble, 2000: 114).

As can be seen, the state will have a role in the self-regulation of competitive market economy. Things will be done together by the state and market under the heading of “co” arrangements as co-regulation, co-steering, co-production, co-allocating, co-operative management, and public-private partnership on national, regional and local levels (Kooiman, 1993: 1-2). This is the definition of governance model and the main state actors that will provide such a co-regulation by including market actors to policy-making process are the IRAs. The new alternative steering model leaning on regulation than on administration is realized through the creation of ‘market-friendly’ IRAs.

IRAs represent the authority of the state on the one hand, and the exclusion of politics based on collective interest from the policy-making authority on the other. IRAs are trying to define themselves above daily politics and the majoritarian interest. Governance model follows a similar path. For instance, Pierre (2000b: 246) defines governance theory as an analytical project that aims to separate the normative and institutional dimensions of the collective interest, which means separation of the objectives of the collective will from the institutional structures of the state. Such a separation is achieved by the creation of IRAs. Similarly, Hirst (2000) argues that various meanings attached to governance have something in common, that is, a search for an alternative to traditional governing model. There is distrust to state because it is perceived as captured by commercial interests, corrupt politicians and unaccountable bureaucracies, so governance seems to be a ‘post-political’ search for effective regulation and accountability. IRAs are entitled to provide such a ‘post-political’, effective and accountable regulation. IRAs are new states in their regulated

sectors, because governance accepts the importance of state for markets and society. The state would not be the only authority for final decisions, but markets could not be left to their self-regulating fate as well. Therefore, governance approach indicates a shift from a centripetal to a centrifugal model of governing, which means a governing model including networks, public-private partnerships and a growing role to private sector in the provision of public services. Hence the role of state is being redefined above and beyond partisan differences that the state should be an arbitrator between social constituencies and organized interests and should provide regulatory frameworks for markets (Rockman, 1989; cited in Pierre, 2000b: 243). That is what the IRAs are trying to do today. Yet, whether IRAs will function as free from capture of commercial interests, corrupt politics and self-seeking manager interests would be an interesting topic of another debate.

The next chapter will be devoted to a critical analysis of the Turkish case of IRAs, in the light of the theoretical discussions made in this and previous chapters.

CHAPTER 6

THE EMERGENCE AND DEVELOPMENT OF INDEPENDENT REGULATORY AGENCIES: THE CASE OF TURKEY

6.1. THE PROBLEM OF DEFINING INDEPENDENT REGULATORY AGENCIES IN TURKEY

IRAs are unfamiliar organizations for the traditional Turkish administrative system and there are numerous debates about their structures, functions, duties, and authorities. There is even no agreement on how to call them. Various names are being attached to these agencies such as “independent administrative authorities”,¹⁵ “regulatory agencies”,¹⁶ “regulatory boards”,¹⁷ “independent administrative agencies”¹⁸, or “autonomous agencies”¹⁹ by different scholars. Yet, in the Turkish political agenda, they are popularly known as “higher boards” inspired from the name of Higher Board of Radio and Television which emerged as an IRA in the television and radio sector in 1994. Moreover, the fact that there is also no clear explicit name given to these agencies in the legal documents, or in the laws regulating their establishments is another factor contributing to the confusion of terminology. For instance, in the law numbered 4743 (Article 7) regulating the control of these agencies, IRAs are defined as “boards, higher boards and institutions depended on them which are established by special law and endowed with public legal personality and administrative and financial autonomy”. On the other hand, in

¹⁵ See: Duran (1997); Gözübüyük and Tan (1998); Akıncı (1999).

¹⁶ See: Sezen (2003).

¹⁷ See: Tan (2002).

¹⁸ See: Ulusoy (1999).

¹⁹ See: Karacan (2002).

the government decision about the implementation, coordination and monitoring of 2002 government program (Article 13/27), they are called as “regulatory and auditor agencies established by special law and endowed with public legal personality, and administrative and financial autonomy”. In the circulation of Prime Ministry numbered 2002/46, they are called as “presidencies of boards and agencies constituted by laws and authorizations leaned on laws” (cited in TÜSİAD, 2002b: 150). In fact, the debates about the organizations, status, structures, duties, authorities and functions of these agencies will probably continue until a common definition and name are determined in legal documents. Yet, within the scope of this thesis, these agencies are called as “independent regulatory agencies” with reference to the explanation made in chapter 2²⁰ and the specific focus will be on those IRAs which regulate the market in Turkey.

In the Turkish administrative system, there are many council-type public organizations, but not all of them can be considered as IRAs. However, there is no agreement about which of those organizations can be called as IRAs. For instance, Duran (1997: 7) asserts that agencies like Department of Religious Affairs (Diyanet İşleri Başkanlığı), the General Health Directorate of Shores and Boundaries (Sahil ve Hudutlar Sağlık Genel Müdürlüğü), State Statistics Institute (Devlet İstatistik Enstitüsü) can be classified as IRAs. On the other hand, Akıncı (1999: 252-254) argues that the Department of Religious Affairs could not be an IRA, because it is an administrative authority in its specific field, but not independent. Likewise, Karacan (2002: 31) accepts that Istanbul Stock Exchange (ISE) (İstanbul Menkul Kıymetler Borsası) can be seen as an IRA, but argues that the Turkish Accounting Standards Board (TASB) (Türkiye Muhasebe Standartları Kurulu) or Saving Deposit Insurance Fund (SDIF) (Tasarruf Mevduatı Sigorta Fonu) cannot be IRAs. Ulusoy (2003: 64) also questions whether the TASB is an IRA or not, and he concludes that it is not a real IRA, but an ‘IRA-like’ agency. There are also agencies as Higher Education Board (HEB) (Yüksek Öğretim Kurumu) or Turkish Football Federation (TFF)

²⁰ According to the explanation made in chapter 2, in order to be called as an IRA, an agency should have its own powers and responsibilities under public law; its organizational structure should be separated from ministries and its members should be neither directly elected by people nor managed by elected officials.

(Türkiye Futbol Federasyonu) which are defined as *sui generis*, even by administrative jurists.²¹

In this study, the Turkish case of IRAs are examined with the analysis of those agencies regulating the market, namely, the Capital Market Board (CMB) (Sermaye Piyasası Kurulu), the Competition Agency (CA) (Rekabet Kurumu), the Banking Regulation and Supervision Agency (BRSA) (Bankacılık Düzenleme ve Denetleme Kurumu), the Telecommunications Agency (TA) (Telekomünikasyon Kurumu), the Energy Market Regulation Agency (EMRA) (Enerji Piyasası Düzenleme Kurumu), the Sugar Agency (SA) (Şeker Kurumu), the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA) (Tütün, Tütün Mamülleri ve Alkollü İçkiler Piyasası Düzenleme Kurumu), the Public Procurement Agency (PA) (Kamu İhale Kurumu). The Higher Board of Radio and Television (HBRT) (Radyo ve Televizyon Üst Kurulu), which is charged with the protection of basic rights and freedoms, is also included in the analysis due to its importance for being the first real IRA of Turkey and its popularity and dominance in the discussions on IRAs, which continued until the emergence of the BRSA.

The IRAs in general has a relation with the economy, but those directly regulating the market are real authorities in their economic sectors and they are very important for their extensive decision-making powers directly shaping the conditions of the markets. By the year 2004, among IRAs, only the CMB and HBRT were organized boards, others were organized as agencies whose boards constituted their decision-making organs. It is also important to note that the regulation of the CA and the PPA is not restricted with a sector, but they are responsible for the regulation of the whole market about their functions. Other IRAs are sectoral regulators responsible from the regulation of their related market domains only.

As already pointed out, one of the complexities making the analysis of IRAs difficult is the lack of agreement and clarity on many issues such as their definition, degree of

²¹ For details, see: Akıncı (1999).

independence, the scope of their authorities, the necessary control mechanisms on them; their organizational set up, their status, their pay and enrollment systems, necessary qualifications of their personnel, their place within the administrative system, their budget regimes, and finally their relations with executive, legislative and judicial organs. Another difficulty to analyze the Turkish case is that there are many IRAs in different sectors and they exhibit differences from the IRAs in other countries, and there are even crucial differences between the IRAs regulating different sectors. Hence, a detailed comparative study sensitive to all these differences would be the subject of a wider study extending the scope of this thesis.²²

In this chapter, first of all, reasons behind the emergence of IRAs in general are explored. The establishment processes of IRAs are also mentioned briefly one by one with regards to the specific characteristics of each. Then, the place of these agencies in the Turkish administrative system and the functions and powers endowed to them are discussed in detail. It is important to note that the basic reasons behind the emergence and development of IRAs in general which were explained in the previous chapters did not occur in a sequential order in Turkey. The basic themes of neo-liberalism, public choice theory, new public management and governance were used at the discursive level to justify the creation of IRAs, but as I will argue in the thesis, in practice, external pressures coming from the international agencies such as IMF, WB, EU and the successive economic crisis played the central role in the emergence of IRAs. For this reason, the analysis will focus more on the international dynamics as well as the conditions in Turkey, in order to end up the discussion with an overall critical assessment about the creation and development of IRAs in Turkey.

²² For detailed interpretations about such discussions, see: Tan (2002); Akıncı (1999); Sezen (2003); Ulusoy (2003).

6.2. THE REASONS OF EMERGENCE OF INDEPENDENT REGULATORY AGENCIES IN TURKEY

As depicted in the previous chapters with reference to the theoretical debates on IRAs, there is a diverse set of reasons behind the emergence of these agencies like the dynamics of globalization, liberalization, privatization as well as the need to initiate neo-liberal reforms by avoiding the influence of the elected politicians who were likely to hesitate between the reforms and political ends or social concerns towards their clientele. I had also pointed out to the fact that many justification mechanisms were used to legitimize IRAs such as the need to replace the so-called bureaucratic and inefficient structures with private firm-like, efficient ones, especially in the delivery of public services. Furthermore, I underlined how differences in state structures, traditions and legal systems affected the way in which IRAs were established and operated in different countries.

In Turkey, the establishment of IRAs is the outcome of a long and conflicting process, accompanied with still ongoing debates. Even though, according to Duran,

The establishment of IRAs in Turkey could be a fantasist attempt if the general principles and existent structures of Turkish administrative system were taken into consideration. That's because Turkey has a highly centralized administrative system and tradition, even the local governments do not enjoy a real autonomy and the autonomous agencies as universities and similar organizations are put under the authority and control of central administration. As a result, the existence of independent administrative organizations within the political system of Turkey cannot be a natural and possible condition.

Turkey has integrated IRAs into its administrative system in the 1990s and 2000s almost about two decades after its adoption of liberal economic policies replacing the previous state-led development policies. What were the causes that led policy-makers to establish IRAs in Turkey?

Firstly, the overwhelming and successive economic crises and the overpowering pressures coming from international agencies such as IMF and WB played the crucial role in the establishment of IRAs. Turkish governments promised to these agencies to establish independent and credible regulatory agencies for securing well-functioning of markets and for ensuring the marketization of public services as far as possible. These promises were stipulations of being eligible to credits provided by international agencies. Hence, the stand-by agreements made with IMF and the recommendations of the WB to recover from successive economic crises has become the key factor in breaking the opposition against emergence of IRAs in Turkey. For instance, in the intention letter submitted to the IMF on 9 December 1999 and latter letters, Turkey promised to establish IRAs such as BRSA, EMRA, TTPABMRA, and PPA to the IMF as a part of the criteria of stabilization.²³

Secondly, Turkey's accelerated drive for the European Union (EU) membership in the 1990s necessitated the meeting of some criteria of harmonization with EU *Acquis*, among which public sector reforms had a considerable place. So IRAs are part of these reforms which aim at guaranteeing liberalization and competition in national markets: For instance, Turkey has prepared a national program to adapt its administrative, political, economic and social structures to the EU' *Acquis Communitarie* and introduced the Turkey's 'National Program for the Adoption of the *Acquis*' which was adopted by the Council of Ministers on 19 March 2001. In that Report, Turkey has made important reform commitments to the EU on regulatory agencies, and other public sector reforms. Some of those commitments can be cited as the development of a draft law on public procurement, and the creation of a regulatory agency in that sector to achieve transparency and competition (The new Public Procurement Law numbered 4734 became effective on 1 January 2003 and the Public Procurement Agency established), the establishment of a regulatory agency in tobacco products and alcoholic beverages sector, and the energy sector (The Tobacco, Tobacco Products and Alcoholic Beverages Market

²³ The details of the intention letters submitted to IMF can be found on the web page of the Undersecretariat of Treasury: [http://: www. hazine.gov.tr.html](http://www.hazine.gov.tr.html)

Regulation Agency established in 2002, the Energy Market Regulation Agency regulating gas and electricity industries established on 2 November 2001).

Such international pressures and commitments to integrate with the EU are factors which differentiate Turkish case of IRAs from the American and Western European experiences. It is then possible to assume that the basic arguments of the public choice theory about the ‘public sector failure’ and the basic themes of new public management such as re-organizing public sector with managerial principles and market values played a relatively minor role in reforms in Turkey despite the fact that these principles and ideas were used at the discursive level in order to justify why IRAs are necessary and how public sector would function efficiently and effectively if management practices and neo-liberal structural reforms are implemented.

Thirdly, the loss of trust to politicians and to the traditional institutions of the Turkish State gave way to and facilitated the emergence of IRAs. The corrupt relations in which politicians, bureaucrats and private sector were involved and the increasing waste of public resources as a result of nepotism, cronyism, and populist policies led to a decrease in public confidence towards the existing institutions. Moreover, the lack of efficiency and transparency in the public sector, the high rigidity and the red-tape in bureaucratic organizations and methods catalyzed the nagging of people against the functioning of public sector. Although these blames against the public sector found their repercussions in the academic literature²⁴ and in the research reports of some business groups such as Türk Sanayiciler ve İşadamları Derneği (TÜSİAD) (2002) (Turkish Industrialists’ and Businessmen’s Association) and Türkiye Odalar ve Borsalar Birliği (TOBB) (2001) (The Union of Chambers and Commodity Exchanges of Turkey), it is difficult to say that these arguments were articulate enough. Complaints of people about these issues mostly increased especially after the forthcoming economic problems in the 1990s and the intensive propaganda within the mass media. For instance, the destructive interventions of

²⁴ For details, see: Akgül (1999); Dursun and Al (1998).

politicians to market values; the losses emerged from the mishandling of privatization and the exploitation of state economic enterprises with political concerns and individual interests, the continuous bothersome ambiguity in economic policies due to the never-ending instable political policies and political clashes of successive coalition governments in the 1990s became popular criticisms against the politicians and the political system. As a result, the arguments of the public choice theory, which were indicated in chapter 3, became relevant in Turkey as well, at least partly in discourse.

These factors mentioned above have been influential in breaking the reaction and reluctance of Turkey against managerial and neo-liberal public sector reforms and the problems, which have been cited with regards to the exiting institutional structures, have been used to justify the establishment of IRAs and they have been presented as an indispensable policy-choice for Turkish governments. IRAs were considered to be very functional to narrow the regulation authority of politicians in desired policy areas and indirectly, to insulate decision-making in key issues from the control of elected politicians. IRAs were propagated for increasing the capacity of government, rescuing markets from influence of elected politicians and providing an efficient, transparent and effective regulation in markets.²⁵ They were presented as the sole way of making credible commitments to the international actors for ensuring competition, impartial regulation and stable economic policies within the country. Though these functions and advantages of IRAs were voiced in the public and political agenda, other implicit goals of IRAs such as securing the maintenance of free market rules and taking the neo-liberal principles into consideration for determining of public policies were not claimed openly or were not discussed. Yet, IRAs would become vital initiator of the new public management reforms in Turkey.²⁶

²⁵ For instance, see: TÜSIAD, 2002b.

²⁶ A comprehensive managerial and neo-liberal public sector reform initiated in Turkey in 2003 after the establishment of many IRAs. This is a basic difference of Turkey from developed countries such as the UK and the other Western European countries, because those countries adopted neo-liberal and managerial public sector reforms before the creation of IRAs in general.

Fourthly, in conjunction with the previous reasons, privatization process was also significant in the emergence and development of IRAs in Turkey. Starting from the 1980s, many public economic enterprises were privatized and some of the monopolized sensitive public policy areas such as telecommunications and energy industry were liberalized and opened to market competition. The uncontrolled provision of privatized public services within the conditions of free market, the fact that public companies run the risk of becoming private monopolies after privatization and the necessity of regulating of some strategic public policy areas in order to secure public interest and avoid the abuse of the basic rights and liberties of people played a key role in the emergence and justification of IRAs. To correct the possible risks of the natural monopoly, externalities of private profit-seeking process, and to take necessary measures to make essential regulations and controls about the relations of firms within the market in accordance with market principles were determined as the basic duties of the IRAs. IRAs were considered also as functional in creating credibility in regulation of the privatized sectors, and then, enforcing more and effective privatization in Turkey. That's because the existing experience of privatization was supposed to be unsuccessful due to the political interests, the inclination of people for public production and the importance attached to those public companies operating in strategic sectors which are seen as necessary for public interest. It could be asserted that the advocates of IRAs assumed that if IRAs can be successful and trustworthy, public organizations in the regulation of privatized sectors, in the long-run, they could easily persuade people for realizing privatization and marketization of public services. This is another basic difference of Turkey from the USA and Western European countries, because those countries, in general, established IRAs to regulate privatized sectors and markets, but Turkey instituted them mostly to accelerate privatization.

Fifthly, as a result of globalization of capital and liberalization of markets, and the rapidly changing technology, some policy areas became difficult to be regulated and controlled by the traditional administrative and judicial structures and methods. Politicians and traditional bureaucrats faced mounting difficulties in solving the technical complexity of the new policy areas such as financial and capital markets

regulation and it became harder for them to appreciate the consequences and reflections of their policies in those policy areas, which also played a role in the explosion of successive economic crises in Turkey in the 1990s. For instance, after the 2001 economic crisis in February, Turkish government could not find any trusty and capable specialist to solve the crisis situation and decided to appoint an experienced Turkish expert who was working in the WB at that time. That person, Kemal Derviş became the state minister responsible from all economic policies in 2001 and played a leading role in the establishment of new IRAs and enormous public sector reforms which would transform the Turkish administrative system profoundly.

Sixthly, politicians benefited from IRAs by shifting to them responsibility for those policies which would result in a lack of credibility and a loss of political support in case they implemented them by their own, because they are independent and their budgets are out of the general budget of the state. By this way, they may delegate the blame for the lack or deficiency of many social policies such as income redistribution, labor policies, and social services as education, health and etc. Moreover, politicians sometimes blame IRAs even for those macroeconomic policies neglecting unemployment and poverty. However, it should be noted that these functional reasons behind the creation of IRAs for politicians as documented in chapter 1, such as shifting blame and escaping from the burden of some policy areas played a lesser role in the emergence of IRAs in Turkey. There is an irony in the way in which politicians pose their attitude *vis-à-vis* IRAs: On the one hand they point out to the necessity of their establishment as the outcome of internationally or economically shaped pressures and justify policies of IRAs on the grounds that they as politicians can not intervene in the independence of the agencies. On the other hand they implicitly complain about the fact that these agencies limit their degree of political maneuver and hence influence their own policy agendas.

Complaints about the judicial process in Turkey constituted a seventh ground for the emergence of IRAs. The judicial system was criticized on the grounds that it had become dysfunctional and inadequate in social regulation in terms of organization

and control. The lawsuits were taking a long time, and the lack of effective and efficient judicial control and conflict resolution in either private issues or administrative issues were creating many problems in practice. Moreover, the judicial organizations could not interfere to functioning of administration directly and could make control only about an a posteriori and concrete incidence in Turkey. Besides, they could not interfere to administration in the implementation process of the judicial decisions, so these conditions hindered the effective control function expected from the judiciary. Above all, it has become difficult for the judiciary to make an effective judgment on areas that necessitate technical specialization such as publication and broadcasting, capital market, banking and finance, telecommunications and economic competition. Thus, the deficiencies of the judiciary assumed to be an effective factor in emergence of IRAs, mostly in some academic papers or reports.²⁷ IRAs were considered to be functional in conflict-resolution in disputes in their specific areas as well as fulfilling the gap of effective and quick intervention in those areas. Notwithstanding, the judiciary has to develop specialized courts to deal with technical and newly-rising complex market issues, because the judicial courts still constitute the final control organs for the acts and actions of administrative system in Turkey. IRAs are established as public institutions and all of their acts and actions are subject to judicial control as well.

Finally, that IRAs would correct market failures, provide the public benefit and secure the basic rights and liberties of people in liberalized sectors became a popular discourse, though a close examination of the practices and regulation of IRAs suggest that these factors seem to be the least effective reasons for the emergence of IRAs in Turkey.

²⁷ See: Ulusoy (2003); Tan (2002); TÜSİAD (2002b).

6.3. THE EMERGENCE OF INDEPENDENT REGULATORY AGENCIES IN TURKEY

In the 1980s, the role of the state in economic affairs was redefined in Turkey and a total transformation process has been witnessed both in economic, administrative, political and social systems. This transformation is generally affected from the neo-liberal climate spreading in all over the world. Turkish government preferred to give up a state-led, rule-bounded economic development model based on planning and import-substitution and favored a new economic growth model based on a free market economy and export-oriented economic policy. The new economic model was inspired from neo-liberal principles, so it necessitated the abolition of traditional bureaucratic and political structures, and avoidance of majoritarian politics which were seen as destructive to market economy. All the interventionist models, traditional bureaucratic apparatus and political systems based on electoral democracy were declared as corrupt, inefficient, irrational and harmful for market economy and in turn, for the welfare of society. Against the maladies, the suggested solutions by neo-liberalism were the separation of politics from economy, putting a clear distinction between state and market, privatization and marketization of public sector and the creation of managerial public structures acting in accordance with private sector principles. The components of the neo-liberal ideological discourse were globalization, liberalization, deregulation and ‘more market, less state’ for economic and societal welfare.

Neo-liberal economic proposals found their repercussions in Turkey as well and Turkish governments have seen neo-liberal economic proposals such as liberalization of trade and finance, privatization, deregulation, and a market-led growth as a solution for economic problems. Yet, they were reluctant to undertake those neo-liberal reforms in the administrative and political spheres (like the creation of a small, effective managerial state and the elimination of redistribution policies). Some of the reasons behind this reluctance were state traditions and legal order of Turkish Republic, the fear of reactions which could come from masses, the resistance of politicians to give up their authority which they might use for the distribution of rent.

As a result, Turkish experience of neo-liberalism was subject to complicated reform attempts inconsistent with each other in many respects. On the one hand, governments felt themselves obliged to apply neo-liberal economic reforms for achieving economic growth and getting more debt from international agencies such as the IMF and the WB in order to solve their current deficit problems. However, they tried to keep away the implementation of political and administrative neo-liberal reforms necessary for maintenance of such economic policies. For instance, instead of eliminating the traditional bureaucratic and political structures, mechanisms and methods, Turkish governments of the 1980s preferred to create alternative bureaucratic, economic and political structures parallel to the existing ones to be able to implement the new economic policies. The following sections deal with those changes that Turkish administrative structure has undergone during the 1980s and that are crucial to understand how and why IRAs were established in the 1990s.

6.3.1. 1980s: THE RESTRUCTURING OF STATE IN TURKEY

In the late 1970s, there was a chaotic environment and an uncontrollable conflict situation in Turkey due to social struggles, political clashes and unbearable economic problems. Turkish government decided to apply a new economic program that represented a total break from the previous economic development model on 24 January 1980, and this new policy choice brought many changes in economic, political, administrative, and social spheres, which found their expression in ‘24th January’ decisions. Those decisions were the initial point of the changing role of state in Turkey. Until the 1980s, the state intervened to the economy as a planner, producer and protector organ by adopting an ‘import-substitution’ policy for the market and supporting national capital to produce all the goods and services within the country. It established public economic enterprises in necessary areas to produce services and goods for people and to produce cheap raw materials for national firms. It set trade restrictions for import entries, a constant exchange rate policy and strict regulations on market in order to support different groups in society including capitalists, laborers, farmers, merchants and villagers. The state was involved

actively in the economy and its bureaucracy was functioning as a ‘locomotive’ for economic development and welfare of society. Bureaucracy was used as a political instrument within the hands of the politicians in that period; it had grown to such an extent that it became almost dysfunctional in handling the societal and political demands, corruptions and economic problems. Some important administrative reform attempts had been made within the planning period in the 1960s to solve these problems, but they could not achieve the expected outcomes.²⁸ As a result, Turkey went into an economic and societal crisis in the late 1970s. The Turkish government of that period made a “stand-by agreement” with the IMF in 1979 which is the root of the 24th January decisions as well. With 24th January decisions, Turkish government decided to give up protectionist and planning economic policy of the 1960s and favored a free market economy policy. The basic elements of this new policy choice were to leave all price determinations to market and eliminating state intervention. All the decisions of production, investment, employment, or procurement would be determined by the actors of the market according to prices, interest rates, and wages set freely in market conditions. The size of the public sector would be limited and public production of goods and services would be diminished as much as possible. A free market economy and an export-oriented economic policy were accepted as national macroeconomic goals for economic growth. Therefore, national trade barriers have been eliminated and economic deregulation policies accelerated in order to unite with global market and attract more foreign capital, which were considered to be the basis of economic growth in this new model. These economic liberalization policies were deepened with financial deregulation in 1989 through which all the financial capital movements were left free and the national market was exposed to arbitrary entry of global capital floating around the world. Financial and trade deregulation were crucial decisions, thanks to which foreign capital succeeded to penetrating easily in the national markets. Of course, all these economic decisions necessitated the reforms in public sector as well, because all the previously adopted economic policies, the planner state understanding and its big bureaucracy, and the traditional methods and instruments of Turkish public

²⁸ For details, see: Karaer (1987b).

administration were blamed for the economic and political crises. The Prime Minister of military government stated the condition of Turkish public administration in his speech of presenting the Government Program as follows:

The structure of the Turkish public administration, which has a long past, became obsolete by failing to adapt itself to innovations and necessities arising from changing conditions and fell behind the economic and social developments. As a result of this, the ills of extreme centralization, imbalances in the distribution of tasks, authorities and responsibilities, excessive overemployment, idle capacity, inefficiency, and needless formalities and red-tape occurred in public administration. The most important factor restraining the economic and social development of Turkey which is a developing country is the existence of these ills of the Turkish public administration. (cited in Karaer, 1987c: 37)

As a result, a comprehensive reform in public sector was initiated. However, the new reform process was not an administrative reform movement to cope with the deficiencies of Turkish administrative system simply, rather its impulse resided in the structural adjustment led by the WB and the IMF because of the debt commitments which aimed at creating a compatible administrative, social and economic structure for institutionalizing the new liberal economic reforms. Of course, it is necessary to emphasize that Turkish governments of the 1980s implemented these reforms improperly according to their political and economic interests and objectives.

Those public reforms in question were the elimination of the traditional bureaucratic and political structures and methods hindering free market economy and competition; privatization of state economic enterprises; transplantation of the private sector management principles totally within public administration system such as managerialism, contractual employment, competition, output-oriented performance measurement; budget constraints and abolition of populist social transfers, decreasing public expenditures, reducing red-tape and formalities, and marketization of public services in favor of the private sector.

As might be observed, the changes in the economic sphere necessitated institutional, administrative, political and judicial changes as well, but the Özal government of the day could not dare to (or not preferred to) make a comprehensive reform geared to alter the judicial, administrative, social and political institutional infrastructures, which would be complementary to economic reforms. Instead, the government tried to meet its economic promises through alternative actors, methods and organizations without eliminating the traditional ones at all (Sezen, 2003: 16). In that context, some key developments in the 1980s, changing state-market relations can be depicted as follows:

In the 1980s, Turkish governments decided to strengthen the executive *vis-à-vis* legislative within the framework provided by the 1982 Constitution. There were four possible reasons for this; ensuring the implementation of neo-liberal economic policies, providing law and order to stop the societal-political clashes which were fierce in that period, avoiding the reactions coming from society for the new economic and administrative policies, and finally, escaping from the control of the Turkish Grand National Assembly (TGNA) on executive acts and actions.

First of all, the 1982 Constitution increased the control of the executive over the public administration system by transferring powers to the political centers such as ministers, Prime Minister, the Council of Ministers and the President in an increasing degree respectively. Secondly, Özal government extensively used the right of issuing decrees having force of law (DFL) to increase the centralization in the executive and the relative power of executive *vis-à-vis* the legislative and the judiciary. Issuing DFLs was not a transfer of legislative authority to the executive branch, but it was an exceptional limited authority delegated by the legislative body by a time-limited authorization law to the executive on urgent and primary issues. Conversely, governments have been used this right not as an exceptional, but as a widespread application in order to make reforms easily that they deemed necessary. For instance, these DFLs were extensively used to make reforms in public administration, and to create alternative bureaucratic structures to implement neo-liberal economic policies. Only 17 DFLs were issued between 1972 and 1978, but 305 DFLs were issued

between 1982 and 1990 and 261 of them were about reformation of public administration. Governments have tried to make comprehensive changes in the public personnel system; procedures and methods of the administrative structure, public economic enterprises, and the institutional structure of the traditional bureaucracy through DFLs.²⁹

Another important aspect of institutional change was unification of some ministries in the 1980s, which were justified by the need for simplicity in organization; defining duties, authorities and responsibilities clearly; providing unity in policies; and performing public services efficiently, quickly and economically. But for Karaer (1987a: 155), the basic reason for such unifications were not to attach two ministries as a whole, but in reality to take some functions and sub-units of that ministries to the state ministries (ministers without portfolio), the number of which increased heavily in the 1980s and 1990s. One may add that such functions and sub-units of ministries were transferred to council-type organizations at first and then these council-type organizations were tied to state ministries. Likewise, the control and power of some important agents of the administrative organization such as state economic enterprises were also transferred to such councils and in turn, to state ministries (Karaer, 1987a: 62).

Some of those councils which became central organizations in the administrative chart of Turkey were the Coordination Board (Koordinasyon Kurulu), the Money and Credit Board (Para ve Kredi Kurulu) and the Capital Market Board. First of all, right after the 24th January decisions, the duties, functions and the structures of the Coordination Board, and the Money and Credit Board were re-arranged³⁰ (Sezen, 2003: 96). In the 1960s, these two Boards were composed of senior economy bureaucrats and they were serving as coordinator agencies monitoring the compliance of applied economic policies with the macroeconomic plans and programs. By 24th January 1980, their duties evolved from coordination and

²⁹ For details, see: Guler (1996: 57-70).

³⁰ They were re-arranged by the decision of Council of Ministers numbered 8/166 dated 24 January 1980, Official Gazette: 25.01.1980/16880.

consultation to direct decision-making in economic issues. For instance, the Coordination Board was authorized to regulate all the economic affairs related to trade quotas, import and export regimes and to take the necessary decisions directly. More importantly, this Board was also authorized to take all the decisions on economic issues that must be implemented by related ministries in cases which did not require the decision of Council of Ministers. Thus, a coordinator board of the 1960s became an organization above ministries which was placed in a position between ministries and Council of Ministers in administrative layout. Likewise, the Money and Credit Board was authorized to take major decisions in money and credit policies and to decide about prices of state supportive and procurement policies. This Board was also authorized to give orders to ministries about its policy areas. The presidents of these two boards were the Undersecretary of the State Planning Organization (SPO) (Devlet Planlama Teşkilatı) in 1960s, but the undersecretary of Prime Ministry³¹ became the president of these two highly-strengthened economic decision-making boards by January 1980. All these changes can be read as the sign of the fact that the Turkish state had given up the planning period and favored the liberal economic model in 1980s. State Planning Organization (SPO) was the central organization in economic issues in the 1960s, but in the 1980s, its role and authority had been minimized. Moreover, Prime Ministry gathered major powers in its hands by tiding such councils under its order and in turn, aimed at implementing the basic neo-liberal economic policies easily from one center.

³¹ Interestingly, the Undersecretary of Prime Ministry in 1980s was Turgut Özal who played an important role in preparation and acceptance of 24th January decisions. Özal became state minister of military government in August 1980 and continued to be the president of these councils with his political identity. This situation (councils composed of bureaucrats and politicians) was highly criticized by administrative jurists, because administrative and political responsibility were mixed up (cited in Güler, 1996: 59). This situation continued until the establishment of Higher Coordination Board of Economic Affairs which has undertaken the political responsibility of decisions of those two sub-councils. Özal became the state minister responsible for economy later and with a new decision of Council of Ministers, he was again appointed to the presidency of these councils. At the end of military rule, he established a political party in 1983, won the elections and became the Prime Minister of Turkey on 6th November 1983. He has gathered important units responsible for economy under the hierarchy of Prime Ministry later and continued to control them effectively. Özal has ruled the country until his election for the Presidency in 1989 and has been the top figure in application of neo-liberal economic policies in 1980s.

In 1981, another economic council was established, that is Higher Coordination Board of Economic Affairs³² (HCBEA) (Ekonomik İşler Yüksek Koordinasyon Kurulu) (Sezen, 2003: 98). This Board was composed of ministers and its president was the Prime Minister. This political Board was authorized to take decisions about domestic and foreign economic issues related to more than one ministry. In 1983, the HCBEA was also authorized to take coordinative decisions related to public economic enterprises.³³ In the same year, the Coordination Board was turned into a “Coordination Committee” (Koordinasyon Komitesi) as an auxiliary organ of the HCBEA, but its authorities to take decisions above ministries continued in case of decisions not requiring the authority of the HCBEA. Likewise, although it was given authorities in addition to its former authorities, the authority of the Money and Credit Board to impose decisions on ministries was abolished at the end of 1983, as its authority was transferred to the HCBEA. Besides, a state minister was appointed to the presidency of the Money and Credit Board. All these developments show that Turkish governments were indecisive about what should be the appropriate administrative structure; all they wanted to do was implementing economic liberal reforms as quick as possible through centralized and individualized economic political councils beyond the Council of Ministers. For instance, the HCBEA was functioning almost as a second Council of Ministers authorized in all economic affairs.

Another important development was the establishment of the Undersecretariat of Treasury and Foreign Trade.³⁴ The establishment, organization, duties and functions of the undersecretariat was arranged by DFL no 188 in 1983 and it was attached to the Prime Ministry. It was established by taking the related units and functions from the Ministry of Finance and Ministry of Trade. This undersecretariat has assured all

³² It was established by the decision of Council of Ministers numbered 8/2257 dated 16 January 1981, Official Gazette: 09.02.1981/17246.

³³ It was organized additionally as Cordination Board of Public Economic Enterprises with DFL no 60/57.

³⁴ This undersecretariat was divided into two in 1994 as the Undersecretariat of Treasury and the Undersecretariat of Foreign Trade separately by DFL no 534 and 535 (Devlet Teşkilatı Rehberi, 1996: 261 and 2670/1).

the important decision making powers about economic issues related to the Treasury and the foreign trade. It has become the central organization determining monetary and finance policies and foreign trade affairs. According to Güler (1996: 61), this undersecretariat has turned out to be an organization above ministries and transformed the ministries and the Council of Ministers into ordinary policy executors. It has served as the top executor of the neo-liberal policies considered by the IMF and the WB. Moreover, the development of this undersecretariat was also an exclusion of Ministry of Finance and SPO from their central planning role in the economy.

Although the Turkish governments tried to escape from the control of the legislative and traditional bureaucratic structures through the creation of alternative bureaucratic structures and an extensive use of the DFLs, the traditional budgetary system still constituted a serious control mechanism which was being approved by the Assembly. In order to avoid the supervisory control of the traditional budgetary system, which could serve as an obstacle; Turkish governments brought about a fragmented budgetary system: They created extra-budgetary funds out of budgets and provided the financial resource of alternative administrative structures and new policies through these funds.

Privatization started by a DFL no 233³⁵ about public economic enterprises on 8 March 1984 through a slight change in the organization of public economic enterprises that made privatization possible. Privatization became a policy goal comprehensively by another DFL no 308 on 5 January 1988 which has altered the previous DFL no 233³⁶ by stating explicitly the policy of privatization about public economic enterprises.

Other changes related to the administrative reforms included the reducing of procedures and formalities in the administrative methods³⁷ and re-regulating the

³⁵ Official gazette: 18.06.1984/18485.

³⁶ Official Gazette: 18.01.1988/19698.

³⁷ An authorization law was issued in 1984 that allows issuing of DFLs on this issue.

public personnel system³⁸. The changes in the public personnel system included flexibility in career proceeding, flexibility in wage determinations, and extension of contractual employment. These changes aimed at recruiting managers transferred from the private sector to the public sector, providing higher payments, and accelerating privatization in public economic enterprises.³⁹

As a result of the unification of ministries, the issuing of multiple DFLs to make changes in public administration, the creation of multiple state ministries by taking important economic functions of service ministries, the setting of alternative bureaucratic structures such as councils and undersecretariats with vital powers in economic affairs parallel to traditional bureaucratic structures (which had become dysfunctional in such economic issues), and finally the tiding of such important agencies as new undersecretariats, new economic councils, state economic enterprises and state-run banks to state ministries or directly to Prime Ministry, Özal governments succeeded at establishing what is called as ‘dual bureaucracy’ in the Turkish administrative system. New organizations were enjoying the crucial powers in economic issues; new managerial methods were firstly tried to be located in these organizations as contract-based personnel getting high salaries, recruiting personnel from the private sector, strong managers working with private sector principles. For instance, Özal government appointed new cadres which were popularly named as ‘princes’ to the managerial positions of critical agencies and state-run banks (Heper, 1990: 222). On the other hand, traditional bureaucratic structures were attributed responsibilities which were not related to economic affairs; their personnel were still civil servants based on career system, their salaries were very low and they were working on traditional methods and procedures.

At the end of this transformation, Prime Ministry became a large very powerful service ministry instead of being a coordinator ministry, collected all important authorities, especially in economic decisions through state ministries and council-

³⁸ DFL no 190, Official Gazette: 14.12.1983/18251.

³⁹ These changes was applied partly in 1980s because most of them were delayed by the judiciary as result of their illegality (for a detailed analysis, see: Güler, 1996: 65-68).

type organizations depended on itself. These developments represented not only a centralization of power in the executive, but also an individualization of this power (Güran, 1989: 17-18).

Thus, Özal governments created a complicated administrative system that has great power to implement necessary liberal reforms in the economy under the directives of the WB and the IMF⁴⁰ and achieved to escape from control of the people by creating a centralized, powerful executive *vis-à-vis* the legislative and avoided the reactions of the traditional structures by creating a dual bureaucracy. This complex structure became functional in the implementation of neo-liberal economic policies, but its complicated duality and highly individualized and politicized pragmatic administrative organization resulted in uncontrollably economic, political and administrative crises in the 1990s. Besides, many of the managerial reform attempts mentioned above could not be achieved in practice, but generally left incomplete. Such a complicated, painful and costly transformation would bring about the need for making new institutional reforms in Turkey, leading to the establishment of IRAs. It is the analysis of IRAs in the Turkish case that I shall now turn to, against the background depicted above.

⁴⁰ The IMF standby agreement of 1979 and consequently 24th January 1980 decisions were the initial phases of structural adjustment process in Turkey. Güler summarized the structural adjustment reforms in Turkey which played a key role in transformation process of state in 1980s: "The restructuring of the state in Turkey was initiated with five SALs (Structural Adjustment Loan) signed with the World Bank (WB) following the 1979 standby agreement. Turkey received 1.6 billion US Dollars as a result of these five agreements; each of which was signed in a financial year. The liquidation of State Economic Enterprises (SEEs), privatization in energy system, the establishment and management of finance and capital markets, the end of the state monopoly in agricultural sectors for inputs such as fertilizers, grains, machines were all initiated with these agreements. At the end of this process, the agreements of sectoral structural adjustment loans (SECAL) were started to be signed with the WB. SAL's were ended up in 1984 and from 1985 onward SECAL's were signed in sectors of agriculture, finance and energy. Although they were not labeled as SECAL, in education, health and local government sectors project loan agreements were initiated for restructuring and regulating these sectors." Güler added that those loan agreements signed in 1980's allegedly sought to modernize public institutions and to establish information systems about how the state agencies and public economic enterprises are working bad, inefficient and costly for people in Turkey (Güler, 1998/2000: 6).

6.3.2. 1990s: THE PROLIFERATION OF INDEPENDENT REGULATORY AGENCIES IN TURKEY

The liberal economic reforms of the 1980s and the following social, administrative and political policies resulted in high tensions in society in the 1990s. Liberal economic reforms were initiated, but a total transformation of the traditional public administration system and its methods into a new public management system supporting neo-liberal principles could not be fully realized. Instead, traditional bureaucratic and political structures were excluded from effective policy areas, their revenue shares diminished, they were left with ineffective duties and continued to function on the basis of traditional methods. However, an alternative bureaucracy was created including new economic council-type organizations and undersecretariats depending on state ministries or directly to the Prime Ministry next to traditional structures. Crucial economic and political authorities were given to these new organizations and they have undertaken implementation of neo-liberal economic policies. Those new organizations were served as instruments of saving the implementation of neo-liberal economic policies from the control of legislative, legal systems and traditions, traditional bureaucratic and political organizations and so the people. New managerial principles tried to be applied pragmatically in new organizations. On the other hand, this mentality created a highly individualized and politicized administrative system depending on personal choices of strong, pragmatist and non-rule-bounded managers of public economic enterprises, council-type organizations staying out of traditional administrative system, and finally depending on political and personal decisions of state ministers determined by the prime minister.

Many policy issues, though addressed and targeted, were far from being achieved. For instance, privatization movement and a proper administrative and political structure in line with neo-liberal tenets were told to be not realized due to political considerations, existent legal system and state traditions, and corrupt state-market relations emerged from nepotism, bribery and rent distribution. Politicians and new

managers continued to work for their own interests in this system as well, they distributed public resources to the private sector in corrupt ways through personal relations and they continued to distribute economic and social rents to different societal groups for political support. Consequently, public deficits increased, dependence on foreign and domestic debts was severed and the state became an organ extracting all the money within the market in order to afford even the interest payments and to revolve its debts by this way. As a result, interest rates multiplied; productive investments discontinued and financial rent investments boosted; economic problems such as unemployment and high inflation grown to unbearable rates. Political instability and bureaucratic complexity accelerated the chaotic economic and administrative conditions, to the extent that Turkey went into a continuous economic and political instability and crises in the 1990s. It was now understood that the glorification of a private sector-led economic growth, dependence on a liberal economy left to individualized authority and personal preferences of politicians and the creation of a dual bureaucracy depending on political considerations could be destructive for economic and social welfare of society. It was clearly seen that both the private sector and the public sector could be corrupt if they were left free in an uncontrolled public administration system and unregulated market conditions.

To sum up, the neo-liberal economic policies of the 1980s maintained by politicized alternative administrative structures failed with high social and economic costs. Some authors such as Aygöl (1997) see the increased burdens on people as a natural consequence of the application of neo-liberal policies. Some others see the neo-liberal policies as a panacea and blame the deficiency of compatible institutional, political and administrative structure for implementation of neo-liberal policies effectively such as the IMF, the WB, the TÜSİAD and some institutions in Turkey under the influence of these agencies. For instance, the Central Bank of Turkish Republic (CBTR) admitted that 1980s liberal policies were a ‘learning by doing’ process, so they understood that the institutional background of a free market economy were non-existent in Turkey and pointed to the deficiency of administrative and political reforms as responsible for the painful consequences of liberal reforms in

1990s (CBTR, 2002). Namely, Turkey has tried to apply neo-liberal economic reforms without constituting the necessary institutional background of them in the 1980s. The institutional background of the liberalization policies in finance and trade was non-existent in Turkey in terms of state-market relations, existing administrative and legal structures and traditional state- private sector relations. It could be allegedly said that Turkey did not apply the neo-liberal economic reforms and managerial reforms in public sector comprehensively and systematically in the 1980s, because they were not demanded or initiated by people or politicians but motivated by external pressures coming from the international organizations such as IMF and WB.

In order to solve economic problems emerged as a result of the liberal policies which were implemented in the 1980s; Turkey decided to put into practice a new structural adjustment program in political and administrative arena in the 1990s in addition to economic structural adjustment reforms of the 1980s. The IMF and the WB again played a leading role in this structural adjustment process and Turkish governments leaned on them because of insufferable debt rates and economic problems. The new adjustment policies included the acceleration of privatization, marketization of public services, de-politicization of market and economic decision process, the establishment of IRAs, abolition of social transfers and rent distribution, decreasing public expenditures and minimizing public sector. Turkish governments tried to implement these new adjustment policies under the monitoring of international agencies such as IMF and WB, but the economic conditions went worse in the 1990s. The proponents of these neo-liberal policies asserted that policies were good for the societal welfare and accused politicians of executing them incomplete and complex. According to the advocates of neo-liberal policies, the reasons behind the worsening economic conditions were political instability emerged from successive coalition governments, the fear of politicians to apply such unpopular decisions that would possibly end up with electoral defeat and their hesitancy to leave their political rent areas and the support of private sector feeding from the existent system. For some

other views criticizing the neo-liberalism, the basic problem was not the contextual factors, but the neo-liberal policies themselves.⁴¹

No matter which explanation is more correct or adequate, severe economic and financial crises of the 1990s led Turkey to establish IRAs in order to win quick credits from the IMF. Some of these IRAs were; the Banking Regulation and Supervision Agency (BRSA) established after the economic crisis in 1999, and the Energy Market Regulation Agency (EMRA), the Sugar Agency (SA) and the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA) after the economic crisis in 2001. It can be stated that, in practice, neither the arguments of public choice theory nor the new public management reforms mentioned in chapter 3 and 4 played a vital role in creation of IRAs in Turkey. Nevertheless, crisis situations discussion provided the most suitable time for politicians as well as the advocates of neo-liberal policies to persuade the citizens that the absence of apolitical regulation (an IRA) was the real, primary cause of economic crisis and everything would be fine in the future by the establishment of such agencies.

6.3.2.1. THE EMERGENCE OF INDEPENDENT REGULATORY AGENCIES BETWEEN 1981 AND 1999

There are various interpretations about the emergence of IRAs in Turkey. For instance, Duran (1997: 3) asserted that the first IRA of Turkey was the General Health Directorate of Shore and Boundaries which was established in 1950s. As far as the definition accepted in the thesis is concerned, that directorate does not meet all the criteria of an IRA, because it was not independent from the central government. The first IRA of Turkey carrying the necessary characteristics is the Capital Market Board (CMB) which was established in 1981, but gained the real status of being an IRA in 1992 by some changes in its establishment law. That section will elaborate the emergence process and some distinguished features of IRAs in Turkey one by

⁴¹ For a detailed discussion see: Aygöl (1997).

one in order to make a closer investigation of the reasons behind the proliferation of these agencies in the 1990s and 2000s.

1. Capital Market Board: The first regulatory agency of Turkey is Capital Market Board (CMB) which was established on 28 July 1981 with the law of Capital Market⁴² numbered 2499 and started to function in 1982. It was established right after the banker crisis⁴³ which emerged in a short time after the application of 24th January decisions (Akıncı, 1999: 201). The objective of Capital Market Law was to constitute an open, credible capital market, to protect the rights and benefits of investors and to draw savings of people to capital market by providing an effective and efficient control on it (Sencer, 1986: 242-243). The agency which will provide the development of capital market and an effective control on it to protect the rights of investors was the CMB. The CMB was organized as free in taking decisions about capital market sector; it had its public legal personality, its members were elected for six years and appointed by the Council of Ministers (three from six nominees of the Ministry of Finance, one each from each of two nominees of Ministry of Justice, Ministry of Trade, Turkish Republic Central Bank and Union of Turkish Banks). Moreover, CMB was politically related to the Ministry of Finance and was charged with making the examinations required by the ministry, reporting the consequences of examinations back and supervising and checking those organizations within the capital market by the approval of the Minister of Finance. Hence, it would not be possible to accept it as a real IRA until the comprehensive changes made within the law numbered 2499 in 1992 and in 1999.⁴⁴ Through these changes, it has become independent from the Ministry of Finance and emerged as the sole authority in capital market issues having the authority of regulation, control, sanction, and coordination.

⁴² Official Gazette: 30.07.1981/17416

⁴³ After the liberalization of prices in markets by the 24th January decisions, interest rates arised enormously. Many bankers emerged collecting the savings of people with high interest rates. Then the savings went into these individuald insted of banks or other investment agencies, so these individuals destructed the balance of financial markets. They left the market after some time, did not pay the savings of people back and a serious crisis emerged in markets.

⁴⁴ In 1992, the law numbered 3749 and in 1999, the law numbered 4487 made considerable changes within the law numbered 2499.

2. Higher Board of Radio and Television: The second IRA of Turkey was the Higher Board of Radio and Television (HBRT) which was established in 1994. The monopoly of the state in public broadcasting came to an end at the beginning of 1990s by advances in technology and by efforts of the private entrepreneurs. Then, law-makers noticed that it was inevitable to make regulation in the broadcasting sector. Thus, the monopoly of the state in public broadcasting was abolished legally by a change in Constitution⁴⁵ in 1993 and as a result of liberalization in broadcasting sector, HBRT⁴⁶ emerged to regulate and control this sector, and to protect the basic rights and liberties of people in respect to this issue. HBRT has undertaken important functions such as contributing to the development of technical infrastructure of the sector, avoiding illegal and immoral broadcast that may harm the cultural, traditional and social structure and development of society, preventing the attacks on the basic rights and liberties of juridical and real persons, and finally providing the maintenance of market principles between the actors of the sector. HBRT was also authorized to control the political broadcast during the election periods in collaboration with High Election Council. Some criticisms aroused against HBRT in different times due to its excessive regulatory and control rights. Among these criticisms, especially those blaming the HBRT for being a censorious organ rather than being regulatory thus contributing to development of the sector were important, but in general, HBRT is being accepted as an indispensable organ for broadcasting sector today.

3. Competition Agency: The third IRA of Turkey was the Competition Agency (CA) which was established in 1994. CA was established by the law numbered 4054⁴⁷ for the protection of competition which was made in 1994 in order to avoid any contracts, decisions and applications that may hinder, spoil or restrict competition within the goods and services market and to make necessary rules, regulations and controls to provide maintenance of competitive relations. CA was

⁴⁵ The law numbered 2709 about changing the article 133 of the Constitution of Turkish Republic, Official Gazette: 10.07.1993/21633.

⁴⁶ It was established by the law numbered 3984 dated 13 April 1994.

⁴⁷ It was published in Official Gazette on 13 December 1994.

authorized to provide competition, to determine conditions of competition and to implement the necessities of this law (Article 20). Interestingly, CA was established in 1994, but could not start to function until 1997. The board of directors of CA was appointed on 27 February 1997; CA completed its organization in eight months and started to function on 5 November 1997. As a result of the privatization process, CA was endowed with great rights to provide competition in the market and to avoid monopolization and malfunctioning of privatized public enterprises. One of the specific characteristics of CA was that it was designated as ‘affiliated with the central administration’⁴⁸ to increase its independency which was an original definition placed in Turkish administrative system. The establishment of CA in 1994 and its delayed function for three years generated a critical debate. Turkey preferred to apply free market economy in the 1980s, but its basic institution (CA) was established lately in the 1994.⁴⁹

Three reasons may be allegedly stated for the late establishment of the CA; the first one is that political authorities decided to change economic policies in the 1980s, but did not establish its institutions. Secondly, Turkey has been trying to become a member of European Union (EU) and this process accelerated by the 1990s. As a part of this process, Turkey applied to be a member of the Customs Union and the EU requested from Turkey to make necessary structural reforms for the provision of a competitive environment in its internal market and to make necessary adjustment changes in accordance with the European Customs Union Treaty. As a result, politicians decided to make a law regulating competition only after such a process. Turkey signed the Customs Union Treaty with EU on 6 March 1995 and establishment of a CA in compliance with competition authorities in Europe was a norm of that treaty (Akıncı, 1999: 225). Thirdly, privatization policies were initiated in the 1980s in order to create a free market economy and to achieve economic growth through market. Unfortunately, on the one hand, some privatized monopoly enterprises tried to maintain their monopoly status in the market and on the other

⁴⁸ It was affiliated with the ministry of Industry and Commerce by the law numbered 4054, Article: 20.

⁴⁹ 1982 Constitution of Turkish Republic gives the duty of provision of competition to the state in its article 167.

hand, private firms, in general, tried to maximize their profits by not abiding by competition principles, welfare of society and the general norms of the market. The absence of a competition authority deepened these problems. Moreover, most of the privatization projects could not be achieved because of the hesitancy of politicians and of their fear to put the economic burden on the shoulders of the majority of people. To sum up, CA was seen as an indispensable organ for both providing competitive relations in the market and accelerating the privatization process. According to Sezen (2003: 122), the reasons of functioning of CA after three years later from its establishment were; the slackening of reluctant politicians after the signature of the Treaty of Customs Union, because they had gained the visa of Customs Union and the political bargains of government parties about electing the members of the CA. This indicates that politicians have always wanted to control IRAs and tried to make them serving to their demands. Another implication of this is that IRAs were created less by a national intention, then by the enforcement of the external factors.

When one examines the status of CA, which is regulated not as a depended or related agency of central administration but only affiliated with the central administration as well as its excessive authorities and its highly independent organization, it is possible to deduce that CA has constituted a general model for the other IRAs established later. A distinction between agency and board was made firstly in the regulation of CA: Its structure was organized as an agency while the board was remained as its decision making organ. This constituted a model for the following IRAs.

6.3.2.2. THE SUDDEN INCREASE OF INDEPENDENT REGULATORY AGENCIES BETWEEN 1999 AND 2002

By 1999, Turkey had gone into a period in which the number of IRAs increased so suddenly and rapidly that many regulatory authorities emerged especially as a result of the successive financial economic crises that caused distrust to politicians and augmented the dependence on international lender organizations such as IMF. The economic problems of the people became unbearable, and citizens started to lose

their hope from politicians. Within this conjuncture, international organizations became more effective in internal policy and they increased their demands for the structural reforms within the public sector. Their policy priority was the establishment of IRAs that are not prone to political control in many crucial economic sectors. A close examination of all the ‘intention letters’ submitted to the IMF and of the structural adjustment contracts with the WB within the last seven years may explicitly prove that the establishment of all the IRAs, one by one and with their organizational and functional properties are designed and ordered by these agencies from the Turkish governments in return for giving new debts.⁵⁰ Within this process, law-makers were almost threatened by the governments to promulgate all the laws and to establish all the IRAs ordered by the IMF and the WB.⁵¹

Turkey’s accession process to EU membership was another external pressure playing a vital role in the establishment of IRAs. As a result of the negotiations with the EU for full membership, politicians started to initiate dizzying economic, political, administrative and social structural reforms in order to adjust the legal and administrative system of Turkey to the rules and regulations of the EU. Establishment of IRAs in different sectors was also stipulated as a necessary condition of these adjustment reforms made for the entry to EU. Governments put the law-makers under pressure, together with media organizations and private corporations and almost enforced them to approve establishment of IRAs and other structural reforms for the well-being of Turkish economy and for the ticket of the EU train. Political parties which hesitated to support all those dizzying adjustment reforms were accused for obstructing the future of Turkey by the other parties, private corporations, NGOs close to capitalist class and most of the media associations and pro-market authors.

As a consequence of these pressures and propaganda, Banking Regulation and Supervision Agency (BRSA) was established in 1999, Telecommunications Agency

⁵⁰ For details; see: Sezen (2003: 123-9).

⁵¹ For details, see: The writing of G ng r Uras, in which he summarized the law-making process under the rule of international agencies (Milliyet, 07 July 2004).

(TA) in 2000, Energy Market Regulatory Agency (EMRA) in 2001, Sugar Agency (SA) in 2001, The Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA) in 2002, Public Procurement Agency in 2002. Here, it is important to underline that many changes had to be made by time within the establishment laws of these regulatory agencies under the rubric of adjustment to international regulations and the EU materials.

4. Banking Regulation and Supervision Agency (BRSA): BRSA was established by the law numbered 4389 on banking on 23 June 1999 and started to function on 31 August 2000. It was authorized to make all the rules and regulations in the banking sector, to protect the rights of savings owners, to avoid all the acts and actions that may jeopardize the stable functioning of banks and spoil the economy, and to take necessary measures for the well-functioning of credit systems. The previous authorities responsible for the regulation of the banking sector were the Undersecretariat of Treasury and the Central Bank. Nevertheless, those agencies had close ties with political authorities and their regulation was not efficient and effective because there were many state-owned banks in the sector, there were close relationship of the political agencies with banks due to receiving soaring debts with high interest rates from the banks, and those agencies were also responsible from the general macroeconomic policies of the state, so they could not control banks effectively.

When the banking crisis emerged and accelerated by the year 1997, many private banks had come to bankruptcy because of their deposit deficits resulting from unreturned credits used by their owners, other business organizations and the state agencies. The risk-position of banks tied to the unstable monetary policies as exchange policies and interest rate policies was also influential in their bankruptcy in crisis situation. In the end, several banks came to unsustainable positions, so state seized many banks in order to protect the rights of savings owners and to afford their losses. Between 1997 and 2002, 20 banks were taken into Saving Deposit Insurance

Fund (SDIF),⁵² and most of them were privatized banks. These banks loaded heavy costs on the state budget. As a result of these developments and pressures from IMF, BRSA was established in 1999 as an impartial regulatory authority insulated from political control to regulate the banking sector. Many changes were made within the Banking Law numbered 4389 later, for example in December 1999 by the law numbered 4491, in May 2001 by the law numbered 4672 and in January 2002 by the law numbered 4743. These changes aimed at increasing the functions, authorities, independence and transparency of the BRSA and they were generally made in accordance with demands of the IMF. For instance, in the intention letter dated 9 December 1999, almost all the changes that would be made later in the Banking Law was promised to the IMF. BRSA has been the most debated regulatory agency with its applications. Although the members of BRSA were appointed for 6 years in 1999, they were replaced three times in 5 years by some arbitrary tricks of law-makers in laws.⁵³ One may assert that each coalition government and the one-party government emerged in 2002 wanted to appoint new members to this agency.

Within the period of operation of BRSA, the transfer of the bankrupted banks to state budget increased and the financial load of these banks continued to be a burden on tax-payer citizens. Moreover, the crises in the banking sector and the credit relations, and the scandals in the financial sector continued in this period as well. These developments provoked criticisms against BRSA. It was argued that BRSA was not a new fair and efficient regulatory authority in the sector, but only the actors rescuing the banks with public resources had changed. BRSA had replaced the political authorities but the process of bank operations and loading costs on people continued. These criticisms to BRSA constitute a considerable place in the debates on the banking sector today.

⁵² SDIF was established by the DFL no 70 about banks in 1983. This fund has public legal personality and it has been authorized to strenghten the financial conditions of banks whose shares or administration had been transferred to this fund, to restructure these banks and to transfer them again to third personalities. The administration and representation of this fund was given to BRSA by its establishment.

⁵³ For instance, in 2001, with the request of related minister, an additional article was added to the Law numbered 4672 which was making a change in Banking Law numbered 4389 and the functions of the existent members ended after 14 months.

5. Telecommunications Agency (TA): TA was established by the law numbered 4502 on 27 January 2000 to provide the functions stipulated in the Radiotelegram Law numbered 2813 and the Telegraph and Telephone Law numbered 406. It started to function on 15 August 2000. It was authorized to make regulations and control and to take necessary measures for the development and proper-functioning of telecommunications sector. The transformation of Turkish Telecom (Türk Telekom) from a public entrepreneurship into a joint-venture, and the liberalization and regulation reform program within the telecommunications sector was also promised in an economic credit contract made between the Turkey and the International Reconstruction and Development Bank in 2000. Paradoxically, within the law of TA, it was stated that TA was both an independent and autonomous agency (Ulusoy, 2003: 145). These concepts imply very different meanings in administrative and judicial regulations, but law-makers do not see a problem in using them interchangeably. When one looks at the functions of TA in the law, it is stated that it could use its authorities independently.⁵⁴ Similar paradoxes are also found in other laws of IRAs because of the very difficult task by the law-makers to adjust IRAs to the Turkish legal order and system.

6. Energy Market Regulation Agency (EMRA): Electricity Market Regulation Agency was established by the Electricity Market Law numbered 4628 on 20 February 2001 in order to regulate the electricity sector. Then, another law numbered 4646 about the natural gas market was issued for the regulation of natural gas market two months later and the Electricity Market Regulation Agency was transformed into EMRA by a revision made in the law numbered 4628 by the law numbered 4646, and the EMRA started to function on 19 November 2001. EMRA was authorized to make regulations and control on all the acts and actions related to energy sector, to contribute providence of enough, qualified, and less-costly electricity and natural gas to consumers and to provide a competitive, stable and transparent energy market. Before the creation of EMRA, the Ministry of Energy and Natural Resources was

⁵⁴ The 14th Article of the Law numbered 4502 making a change in the 5th Article of the Law umbered 2813.

responsible for the execution of similar functions. Nevertheless, many corruption claims about energy market came into the agenda of the public before the creation of EMRA in 2000s, and these claims eased the justification of its creation. Similar to other IRAs, the establishment of EMRA was also promised to the IMF as a pre-condition of receiving debt in 2000.

There are a lot of inconsistent regulations about the EMRA such as confusingly establishing two different representation organs for the agency (in Article 4 of the law, the decision board of agency is regulated as representative of the agency, but in Article 5, the chairman of the agency is stated as the representative of the agency). Such inconsistent regulations in laws are meaningful for showing the mood, interest and information of law-makers about what they tried to establish.

The Sugar Agency (SA) and the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA)

The establishment of IRAs within the sugar and tobacco industries is specific to Turkey and it is difficult to explain their emergence with the known rationales of the market theory. According to Karacan (2002), the establishments of SA and TTPABMRA were the typical examples indicating how the international agencies, especially within the developing countries, are using IRAs functionally to restrict the policy areas of non-trustworthy politicians. There could be two possible reasons for the emergence of IRAs in agriculture sector; one is that agriculture sector has traditionally been seen as one of the major areas through which politicians transfer resources to private interest groups. Second, the subsidy and support policies in agriculture and the declaration of minimum prices for agricultural products by political authorities were seen as detrimental for the development of the free market economy. However, this latter argument does not explain why in USA and EU (known as the major champions of free market), such redistributive policies are pursued. Therefore, it seems more appropriate to argue that IRAs emerged in the agriculture sector in order to provide competitive free market conditions according to

the arbitrary wishes of private companies and the proponents of neo-liberal economic principles.

7. Sugar Agency (SA): SA was established by the law numbered 4634 on 04 April 2001 in order to regulate the sugar industry and to determine the methods and fundamentals of producing, pricing, and marketing of this product. SA is different from other IRAs in many ways. For instance, the members of all the other IRAs could not work in any other organization during their term in their agency and their work period could end only after a pre-determined time period such as six years if they did not commit any of the crimes regulated by the law. On the other hand, the members of SA could have two jobs at the same time. Moreover, the basic duty of the members of SA is determined as representing the interests of other institutions, in which they are working. Consequently, they could be a member of the Board of directors of SA on the one hand, and they could continue to hold their job in another organization on the other. Furthermore, if the members of SA lose their job in the other institution, their membership ends within the regulatory agency as well. Within this perspective, the membership of SA is not a full-time job for its members. This situation may create a great problem about the independency of the SA, because it is explicit that the members of the SA will do the orders of the institutions they represent in order not to lose their jobs. Another interesting point is that, although the ‘twice salary of the highest civil servant’ was considered as the benchmark for the members of other IRAs in the determination of their wages, ‘the wage paid for the members and the president of the Board of directors of public economic enterprises’ was taken as the basis about the determination of the wages of the members of the SA. In addition, it is stated by the law numbered 4634 that the term of SA will end in 2004 and it is added that a new regulation must be made by 2004. The right to extend the term of SA is left to the discretion of the Council of Ministers in 2004.

8. The Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA): TTPABMRA was established by the law numbered 4733 on 3 January 2002. It was authorized to regulate and control the tobacco, tobacco products and the alcoholic beverages market. In addition to its economic regulation

functions within the market principles, the TTPABMRA was also designed to provide social regulations in its sectors to protect health and societal life from hazardous applications that may emerge in the distribution of alcoholic drinks and cigarettes.

The SA and the TTPABMRA are interesting IRAs that must be evaluated differently from others. Their functions could easily be fulfilled by some other specialized agencies within the central administration, but they were established with different concerns. As the director of WB, Ajay Chhibber stated

The SA and TTPABMRA established to regulate the agriculture sector are transitory agencies. (Hürriyet, 17.02.2002, cited in TÜSIAD, 2002b: 157).

These agencies emerged to avoid the transfer of resources by politicians to private interest groups within the agriculture sector and to eliminate subsidies and supports of state to farmers. Their major duty is to provide the infrastructure of production in market conditions within the tobacco and sugar sectors. Interestingly, although the temporariness of the SA is designated by the law numbered 4634; such a statement is not put into the law of the TTPABMRA.

IMF and WB have played a direct role in the establishment of these IRAs. Yet, for the first time, the law-makers stated the direct influence of these international agencies about decisions related to IRAs within the article of a law: Within the temporary 8th article of the Sugar Law numbered 4634, it is directly stated that “The Council of Ministers will re-determine the duty, authority and duration of the agency and its organs on 31 December 2004 within the framework of the contracts made with international agencies.”

9. Public Procurement Agency (PPA): PPA was established by Public Procurement Law numbered 4734 which was accepted on 4 January 2001. Its members were appointed on 6 April 2002 and it started to function by that date. The basic functions of PPA are to examine and evaluate all the complains related to the procurements

made by the public sector; to constitute legal materials, standard procurement documents and contracts within the framework of Public Procurement Law that would regulate the details; to keep statistics about all the procurements made; to keep records of those banned from participating the public procurements; and finally, to apply necessary sanctions for irregularities and illegalities emerged in public procurement processes. Before PPA, all the conditions of state procurements were designed by the State Procurement Law numbered 2886. There was no responsible central agency for the application of this law, so all the authority was being used by the administrative agencies arranging procurements to buy goods and services within the market. There was no administrative control agency for the irregularities, illegalities and corruptions in the procurement process. Besides, as a result of opening of public procurements to the global market for competition, the European Commission has proposed member countries to establish mechanisms that are authorized to control the procurement processes urgently and effectively, and to impose sanctions before the judicial organs (89/665/EEC). European Commission has also determined the basic functions and authorities of the agency that may responsible for the regulation and control of public procurement decisions. Thus, one may conclude that the first reason of the establishment of PPA was the necessity of adjustment process to the EU. Otherwise, politicians and bureaucrats would be reluctant to give up such an economic and political rent area. For instance, many changes have been made in the articles of the Law numbered 4734 by another Law numbered 4761 on 22 June 2002 in order to make Public Procurement Law more compatible to international regulations and the EU acquirements only after six months from the promulgation of the Law numbered 4734 by the demand of the PPA.

A distinctive feature of the PPA from other IRAs is that although all the other IRAs emerged as regulatory authorities of state on private entrepreneurs in their sectors, the PPA emerged to control the public institutions in a relation in which the state takes the place as a boss, and the private entrepreneurs take the place of providers. In this case, this regulatory authority emerged not to regulate only the market, but also to control the state agencies to avoid corruptions and irregularities in their acts and

actions. Public procurement processes are popularly known as political resource allocation areas to private interest groups favored by the arbitrary discretion of political or bureaucratic actors. Therefore, the existence of PPA is also an indicator of the creation of alternative and privileged public institution parallel to the traditional political and bureaucratic ones. Indeed, PPA is almost authorized to re-define the resource allocation processes within the society. Therefore, since within the liberalization and globalization process, transnational capital is floating on all over the world to conquer profitable areas and from this perspective, one may drive some insights about how this new resource allocation process would be shaped in national countries through the establishment of such agencies as the PPA.

6.4. THE POWERS OF INDEPENDENT REGULATORY AGENCIES

IRAs are unusual organizations with respect to the traditional administrative structures, not only with their structural and organizational characteristics, but also with their functional properties. IRAs are endowed with comprehensive duties and powers as issuing regulation and rules about their policy areas, implementing policies and controlling the application of regulations by regulatees, and imposing administrative and monetary sanctions on non-obedience to rules and regulations. Moreover, IRAs are authorized to solve the conflicts between actors of the market. To make and support researches for the development of markets and provide advisory services for market actors in order to guarantee the proper-functioning of the markets are some other duties ascribed to IRAs.

The members of the IRAs are not democratically elected, they are organized as independent from government and they are endowed with extensive powers, so that some scholars point out that these organizations are not sole administrative agencies, but they may be defined as *hybrid* agencies (Teitgen-Colly, 1990; Hubac and Pesier, 1988; cited in Tan, 2002). These scholars warned that the power of making rules and regulations sometimes becomes as influential as laws and the power of solving conflicts sometimes becomes as concrete as judicial decisions, then IRAs seem to gather three basic separated powers of state in one body, that are legislative, judicial

and executive. From such a point of view, IRAs can be evaluated as a serious threat to democracy, protection of basic rights and liberties of citizens. On the other hand, IRAs are defined as administrative organizations in legal texts and all of their decisions are subjected to judicial review in Turkey. Legislature has the authority to establish or abolish IRAs; governments say the last word about appointment of members to IRAs. As a result, though they are much powerful in their own jurisdictions, they are not as much powerful as a *Leviathan* enjoying the final legislative, judicial and executive powers. It would be useful to examine their duties and powers in detail, which would provide us with important clues about the reasons of their emergence and development in Turkey:

a. Regulatory Powers: IRAs are endowed with extensive regulatory powers. Their regulatory powers encompass the authority of giving permission, and the authority of issuing rules, circulars (genelge), by-laws (yönetmelik), communiqués (tebliğ), and qualified binding decisions (özel nitelikli bağlayıcı kararlar). First of all, IRAs are public legal personalities, so they can issue by-laws to determine the details and application of laws and regulations (tüzük) related with their policy areas, but these by-laws cannot include articles transcending the context and scope of the laws which they are leaned to (Constitution of the Turkish Republic, Article 124). In addition to this, IRAs are able to issue other regulatory operations such as circulars, communiqués and qualified binding decisions which increase their power beyond a traditional administrative organ. For instance, CMB (by the Law numbered 2499) and BRSA (by the Law numbered 4389) are authorized to take qualified binding decisions to regulate their sectors (Tan, 2002: 27). All the regulatory operations (as by-laws and communiqués) must be published in the Official Gazette to be applied, but the law-makers did not bring such an obligation for qualified binding decisions. Thus, one may conclude that qualified binding decisions must not necessarily be regulatory operations. The regulatory operation of the executive is a limited, complementary and depended power that cannot be above laws; it cannot enlarge or constrict the scope of laws according to the Constitution. Such extensive regulatory powers of IRAs and the excessive rights given to them such as issuing qualified binding decisions reminds that their regulatory acts are approaching to legislative

decisions in some perspectives. Moreover, in practice, IRAs are issuing numerous regulatory decisions and some of their decisions are being annulled by the Council of State for their opposition or noncompliance to laws. About their authority of giving permissions, almost all the transactions in a sector are subject to the permit of the regulating authority of that sector. For instance, the establishment of a bank, making banking transactions, the unification of banks, establishing an agency of a Turkish bank abroad, setting up of joint-ventures or partnerships with foreigners, the selling or procurement of 10 % capital of a bank between two or more legal personalities depend on the permit of BRSA. About the regulatory decisions, IRAs decide about almost all the rules of the market. For instance, all the conditions of exportation of capital market instruments, all the conditions of supply and sale to general public, all the mediation functions of intermediary financial agencies, and even the characteristics of personnel that will work in capital market agencies are determined by the regulatory decisions of CMB.

To sum up, IRAs are functioning as the sole authority of market with their wide-ranging regulatory powers. Moreover, they are also influential on law-makers within the law-making process about their sectors due to their technical specialization, expertise and experience.

b. Control and Supervisory Powers: IRAs are authorized to control and supervise the acts and actions of actors within the market and impose sanctions on them in the case of adversity disobedience to rules and regulations or non-compliance with general principles of market. In order to make control or supervision, IRAs may take action by complaints of actors in the market or may decide to make operations directly. IRAs continuously monitor the acts and actions in their sectors and they are authorized to conduct any kind of research, inspection, and investigation. The agencies supervised are obliged to provide any kind of information and documents that are requested by IRAs. In the case of concealing documents and information, or providing wrong information or opposing to control; IRAs are authorized to impose severe administrative and monetary sanctions. Moreover, if the supervised agencies refuse to provide the requested documents and information, the regulatory authority

may apply to judiciary and with a written decision of an authorized judge, the regulatory authority may make a search directly within the supervised agency (Law numbered 2499/45).

To sum up, the excessive regulatory authorizations to IRAs are complemented by provision of excessive control and supervisory authorities to them. For instance, CMB is authorized to control every acts and actions related to its regulated sector and the actors within the sector; it can request any kind of document or information from agencies; it can impose fines or administrative sanction on agencies and finally it can make direct searches within the agencies by a written decision of the authorized judge (by a change made in the Law numbered 2499 by the Law numbered 4487). Agencies within the capital market objected to such rights of CMB and asserted that they are against constitution. They published complaint announcements about CMB within the newspapers and asserted that CMB was damaging their firms and their partnerships.⁵⁵

c. Sanction Powers: IRAs emerged due to deficiencies of traditional administrative structures and administrative law about performing an efficient and effective administration, regulation and control in sensitive sectors of public, privatized sectors and the general market. As a result, in addition to their important regulatory and control powers, they are also endowed with crucial sanction rights to achieve their objectives. These sanction powers include administrative sanctions as abolishing the permits of agencies temporarily or continuously, and monetary sanctions as charging high-cost fines. Although the extensive sanction powers of IRAs invoke serious criticisms about their judicial status, these authorities are accepted as an extension of regulatory and control authorities of IRAs. IRAs are imposing such sanctions to provide obedience to their rules and regulations and they are doing them under the rubric of providing well-functioning of market and protection of public interest in related issues. For instance, CMB is authorized to close down the sale of capital market instruments to public if it finds it against public

⁵⁵ See Hürriyet dated 12 October 2000; cited in Sezen, 2003: 146.

interest. The judicial-like sanction rights of IRAs and the open-ended powers depended on protection of public interest cause never-ending critical debates about the status and legitimacy of IRAs. As a result, countless proposals are being discussed about how to make sanction powers more applicable. Majone (1996b: 291-294) collected some of them as follows: Related agencies must be warned before application of sanction; they must be motivated to correct their mistakes; they must be given the ‘right of defense’; details of sanction procedures must be determined clearly; the process of sanction decision must be transparent and open to public; the reasons of sanction decisions must be announced in a detailed manner; and all the decisions must be subject to judicial review. In Turkish case, all the decisions of IRAs are subject to judicial review, but there are many open-ended and complex regulations on their authorities, and complicated applications in practice. IRAs are authorized to use some of their sanction rights only by applying to courts such as the permanent closing down of agencies that are making banking operations without license can be decided by courts with the application of BRSA. In the case of urgent situations, this sanction can be decided by the provincial governorships by application of BRSA (Sezen, 2003: 148). There are many inconsistent and complicated regulations on sanction authorities of IRAs in Turkey. According to Tan (2002: 30) sanction authorities must be constricted by laws to a minimum degree that may ensure the effective regulation of authority and basic rights and liberties must be protected in determination of the dimension of those sanction authorities. The degree, scope and regulations about sanction authorities varying from one IRA to another in Turkey. For instance, the laws⁵⁶ about CA, CMB and BRSA designate that related IRAs must allow the agencies to use their ‘right of defense’ for a pre-determined time period before imposing administrative sanctions on them; but the laws⁵⁷ about EMRA and SA do not give such a right for regulatees.

⁵⁶ Law numbered 4054 (Article 45 and others) about protection of competition (related to CA), Law numbered 2499 (Article 47/a) about capital market (related to CMB), and Law numbered 4389 (Article 21) about banking (related to BRSA).

⁵⁷ Law numbered 4628 about electricity market (related to EMRA) and Law numbered 4634 about sugar (related to SA).

Another example of different regulation of IRAs is related to their authority of imposing fines. For instance, the fines imposed by CA become definite legally if the related agency has not applied to Council of State for objection within pre-determined time interval after the official notification of the fine⁵⁸, and then, it can be collected in accordance with the law numbered 6183. On the other hand, the fines imposed by EMRA can be objected within 15 days; if no objection is made or if the objection is rejected, then the fine becomes definite legally⁵⁹ and it is collected by the Ministry of Finance on behalf of the EMRA in accordance with the law numbered 6183. As different from these two examples, about the fines imposed by SA⁶⁰, it is regulated that agencies can make objection to administrative courts within 30 days, but the objection does not impede the application of the fine and it is collected in accordance with the law numbered 6183. Various complex and inconsistent regulations related to administrative and monetary sanction powers of IRAs can be enumerated as well. Another problem in Turkey is the monetary sanctions of IRAs are designated to be counted within the revenues of them by laws. This creates another debate that this condition may spoil the impartiality of IRAs and may harm their independence from the regulatees.

To sum up, the sanction powers of IRAs are complex and inconsistent in Turkey. They are providing judicial-like powers to IRAs and so they are invoking serious questions about the legitimacy, accountability and transparency of IRAs.

d. Consultative and View Notification Functions: IRAs are not only responsible for well-functioning of markets, but they are also responsible for development of markets. They are authorized to make all the necessary actions that will contribute to the development of market economy, and an important part of this duty is undoubtedly to provide consultative services to public organizations within the state sector, especially to the political and bureaucratic agencies determining macro economic policies, and the private organizations such as regulated firms and

⁵⁸ It is regulated by the Law numbered 4054, Article 55.

⁵⁹ It is regulated by the Law numbered 4628, Article 11.

⁶⁰ It is regulated by the Law numbered 4634, Article 11.

corporations. Likewise, public agencies and private organizations endowed with the right of requesting consultancy of IRAs and asking their views in cases they deemed necessary. In addition to this, law-makers held some public and private agencies obliged to ask the consultation of regulatory agencies in some operations and take their approval in some cases. For instance, banks in Turkey are obliged to ask the notification of BRSA and take its approval before they change their basic contracts, or before they appoint their general and assistant managers. BRSA is also charged with giving notification or information to the State Planning Organization, the Undersecretariat of Treasury and the Central Bank about monetary, credit and banking policies if they request.⁶¹ IRAs are vital organizations for free market economy, so they must work in coordination with each other, with other public agencies and with the private actors in the market. Diffusion of true information and transparent regulation is a crucial part of this process. As a result, they are arranging many conferences, panels and seminars to provide information to the public about development of markets, and they are providing consultation to agencies within the sector to instill market principles in their minds and practices. They are also influencing macroeconomic policies and becoming determinant in the constitution of economic policies about their market domains.

e. Conflict Resolution Powers: One of the specific functions of IRAs is their conflict resolution powers. The conflict resolution and judgment functions are given to independent judicial courts in Constitution. IRAs are endowed with judicial-like powers as conflict resolution due to their independency, and the technical and complex conditions of their policy areas. To avoid over-extended court sessions and conflict resolution process among regulatees within the sector is another reason of authorizing IRAs for conflict resolution. In practice, all the private and public organizations and the individuals affected by the acts and actions of the private firm, regulatory agency, or public agency within the sector may apply to IRAs to issue their complaints. IRAs may provide conflict resolution function in return to the demands of citizens or institutions, or in some cases they may decide to intervene by

⁶¹ It is regulated by the Law numbered 4389, Article 3/10.

themselves. IRAs would provide urgent decisions in some cases and would rescue the conflicting parties from an enduring court process. Here, it is important to emphasize that all the decisions of IRAs are administrative decisions including their conflict resolving decisions, so all the real or legal personalities may apply to courts for the decisions of IRAs. In fact, all the acts and actions of administrative institutions are subject to judicial control in Turkey.⁶²

To exemplify conflict resolution powers of IRAs, one may add that EMRA is authorized to solve all the conflicts between the legal personalities, between the legal personalities and consumers and between license-owner agencies in the application of the law of natural gas market or conflicts emerged in distribution and conduction operations. Another interesting example is CMB. According to the by-law of Istanbul Stock Exchange (ISE) (Article 43, Official Gazette: 19.02.1996/22559), the conflict between members of exchange and customers can be resolved by the Management of Exchange. Conflicting parties can apply to CMB if they want to object to the decision of Management of Exchange. The decision of CMB about conflict is final, but of course application to judicial review is possible. CMB is also considered as the final decision making authority by the Law numbered 2499⁶³ about the conflicts emerged from decisions of the Association of Capital Market Intermediary Institutions of Turkey (Türkiye Sermaye Piyasası Aracı Kuruluşları Birliği) about the conditions of their members. Although all the decisions of executive are subject to judicial review constitutionally, law-makers do not hesitate to determine the CMB as the final authority of conflict resolution in some cases.

f. Research, Education, and Information Presentation Functions: IRAs are charged with many other functions to provide efficient, effective and competitive markets, to protect basic rights and liberties of citizens and to contribute to the economic policies of government in order to realize economic growth. Some IRAs are given the duties to make research and to hold educational activities. For instance, SA has the duty to coordinate research and development activities within the sector and

⁶² The 1982 Constitution of Turkish Republic, Article 125.

⁶³ Such a statement is added to the Law numbered 2499 by the Law numbered 4487, Article 40/c.

to provide financial resource when necessary. PPA to arrange educational activities about transfer laws, legal regulations about public transfers and market principles in transfer practices.

IRAs are also required to transmit information to the public about their acts and actions. They must be transparent and open agencies to gain trustworthy in the long-run (Karacan, 2002). For instance, BRSA and CMB are required to publish all of their activities and the development in their sectors to public and to make necessary announcement about the firms, transactions and facilities in their sectors. They are expected to avoid false information given by different actors and make the truths heard by the public through newspapers or respectful broadcasting associations. However, many scandals emerged about malfunctioning and arbitrary applications of IRAs, one of which is related to this function.⁶⁴ These scandals indicate at least one thing, politicians and bureaucrats are being criticized to justify the formation of these IRAs, but the members of IRAs could be criticized in the same way as well.

⁶⁴ IRAs must be transparent and are charged with avoiding distribution of false information in the market and society by law. It is also seen very important for their credibility in the long-run. On the other hand, some examples indicate that things change in practice. For instance, İmar Bank has been purchasing and selling treasury bank for many years in Turkey. It was seized by BRSA in 2003 due to its financial weakness, but after the examinations made in the accounts of it, it was found out that it has no licence from CMB to purchase or sell treasury bills. Then, a crisis emerged between BRSA and CMB after this scandal, BRSA blamed CMB for not warning and avoiding this false information, and recoured to court against CMB. CMB defended itself and asserted that it did not know the illegal sale of treasury bills in that bank. Interestingly, that bank has been making numerous advertisements about its profitable conditions for purchase and sale of treasury bills in press and broadcasting associations. Likewise, BRSA was also blamed for not controlling a bank effectively under its rule (Hürriyet, dated 15 October 2003). This appalling example shows that it is so early to define IRAs as transparent, accountable and impartial organizations. It is also meaningful, because it indicates that serious discussions are necessary about the potential consequences of the extensive powers and independent status of them. The cost of the bankruptcy of that bank was about seven billion dollars for Turkish citizens, including its illegal sale of treasury bills, because all the deposits of customers in banks were under state guarantee.

6.5. THE PROBLEM OF LOCATING INDEPENDENT REGULATORY AGENCIES WITHIN THE TURKISH ADMINISTRATIVE SYSTEM

IRAs are specific administrative units which are very difficult to locate in the traditional administrative systems. There are various debates about the status, powers, functions, and properties of IRAs in Turkey. IRAs emerged without a systematic approach in Turkey; there has not been a comprehensive research and an administrative reform study about how they could be adjusted to the Turkish administrative system. The establishment of IRAs usually came after successive economic crisis situations as a “bad medicine” for salvation. Consequently, the laws establishing IRAs generally issued with urgency in Turkey through direct adaptation from their foreign counterparts and the directives of the international organizations. The law-makers tried to establish IRAs in Turkey that look like the foreign models in terms of independence, authorities, functions and capabilities. This was a typical indicator of ‘institutional isomorphism’ that was mentioned in chapter 2. Nevertheless, by taking into consideration the emergence conditions of IRAs under the pressures of international agencies such as IMF, WB and EU, it may be asserted that it was mostly an example of ‘coercive isomorphism’, which was conceptualized by DiMaggio and Powell (1991). Within that urgent law-making process, law-makers tried to establish the organization of IRAs and their structures, functions, and authorities compliant with international demands on the one hand, but naturally tried to adjust them to Turkish legal and administrative order on the other. Conversely, it was a daunting task to mount IRAs into the legal and administrative system of Turkey, because IRAs were shaped in urgency without a systematic administrative reform about how their positioning within the administrative system of Turkey should be. As a result, many complexities, inconsistencies and contradictions occurred within the laws establishing IRAs. Thus, the organic laws establishing IRAs have been continuously changed with respect to different concerns by time. Sometimes these changes were designed to make them well-suited to international models and demands, sometimes about to adapt them to the legal and administrative

system of Turkey. There were also other revisions by politicians to put them under more political control due to the complaints about their legitimacy, accountability and privileges. To sum up, there emerged complex and distinguished IRA examples in Turkish administrative system, and there are still many inconsistencies and contradictions about their characteristics and their place in the Turkish legal system, giving the way to a set of discussions about their structure, authorities, functions, organizational properties and place in the administrative system.

6.5.1. THE PROBLEM OF INDEPENDENCE

Tan (2002: 15) analyzed the meaning of “independent administrative authority” concept for Turkish administrative system and explained it with references to the words constituting that concept. “Independent” implies that they are independent organically and functionally from executive branch; “administrative” implies that they are administrative organizations whether they possess public legal personality or not; “authority” implies that they are not consultative organs, but they are regulatory and specific final decision-making organs in their areas.

The ‘independent’ or the ‘highly autonomous’ status of IRAs caused fierce discussions within the centralized administrative system of Turkey. The independent status of IRAs is emphasized to imply that they possess more organizational and functional authority than a typical autonomous administrative unit.⁶⁵ In Turkey, IRAs are legally defined as agencies having public legal personality,⁶⁶ possessing administrative and financial autonomy and independent in performing their functions in general. IRAs are endowed with enormous regulatory, control and sanction authorities which have caused interpretations evaluating them as the ‘fourth branch of government’.

⁶⁵ For a detailed discussion about the meaning of ‘administrative independency’ and ‘autonomous administration’, see: Akıncı (1999) and Günday (1999).

⁶⁶ They are organized as public legal personalities in Turkish administrative system (different from IRAs in France), because they can issue regulatory acts such as by-laws only by this way according to the Turkish Legal System.

What may the ‘independent status of regulatory agencies’ imply for the Turkish administrative system? According to Akıncı (1999: 101), independence status is given to regulatory agencies in order to protect them with a judicial-like safety from the interference and influences of political government, administrative bureaucracy and private groups when they are performing their regulatory, control and public benefit protection functions. For Ulusoy (2003: 15-18), administrative independence includes two kinds of independence; ‘organic independence’ and ‘functional independence.’ Organic independence implies that the members of the decision-making organ of IRAs must be endowed with some statutory securities. Functional independence implies that there must not be any kind control authority of any units within the executive branch on the acts and actions of IRAs that may result in the invalidity of the acts and actions of IRAs.

When the status of IRAs in Turkey is examined, one could observe that there is no standard model about the status of IRAs. They are covered with different authorities, organizational properties, and different degrees of autonomy according to their sectors. For instance, all the IRAs except HBRT and Sugar Agency are defined as possessing administrative and financial autonomy in their organic laws, but there is no statement of autonomy about SA in its establishment law and HBRT is only defined as autonomous and impartial within its organic law. About independency, there is an emphasis on independence only within establishment laws of four IRAs that are CMB, CA, TA and PPA. The implication of independency for EMRA is provided by a by-law regulating the organization of this agency⁶⁷ (Sezen, 2003: 143).

IRAs enjoy independence *vis-à-vis* executive branch as a general rule in Turkey both functionally and organically. There is no hierarchical or administrative tutelage control on the acts and actions of IRAs. The members of the decision-making boards of IRAs have statutory securities as appointment for a fix period and secured from

⁶⁷ There is no emphasis on ‘independence’ neither within the Electricity Market Law numbered 4628 nor within the Natural Gas Market Law numbered 4646, but the by-law (numbered as 2001/3501 dated 12 December 2001) issued by the Council of Ministers about the organization and the working methods of the personnel of the Energy Market Regulation Agency states that (in Article 9 regulating the securities and rights of members) no organ, authority, office or person can give order or command to members of the agency, in making their duties, in order to influence their final decisions.

dismissal before the end of their work period except the cases defined in law. The administrative control mechanisms are very weak on IRAs but they cannot be seen as totally independent. They are under the control of the Turkish Grand National Assembly (TGNA) and the judiciary as a general rule. IRAs may be established or abolished by laws by the Assembly. Moreover, the authority of election or determination of members of IRAs is given to the Council of Ministers in all IRAs except the HBRT.⁶⁸ On the other hand, in practice, politicians sometimes change laws and appoint new members to IRAs before the end of their term which could be interpreted as a threat to the independence of IRAs.

The independence problem of IRAs can be evaluated within the context of politics-administration dichotomy as well. If the political control mechanisms on IRAs increase, the independency of IRAs decreases. IRAs are considered as insulated from political control and endowed with great authorities in order to fulfill their functions effectively, but this independence gives way to serious criticisms against IRAs as well. The lack of typical administrative and political control mechanisms over them, the risk of by-passing the authority and demands of the majority of people, and the possibility of the emergence of IRAs as organizations of self-seeking technocrats are some points that may intensify the critical debates against these institutions blaming them for being unaccountable and illegitimate. IRAs are also being questioned in Turkey about whether they are spoiling the indivisibility of the administration practice or not, and whether they are in compliance with the Constitution or not.

⁶⁸There are nine members within the decision-making organ of the HBRT, all of them are being appointed by the Turkish Grand National Assembly; five from the nominees of the political part in power and four from the nominees of the biggest political party in opposition.

6.5.2. THE PROBLEM OF DEFINING THE RELATIONSHIP OF INDEPENDENT REGULATORY AGENCIES WITH THE EXECUTIVE BRANCH

IRAS may have public legal personalities, excessive authorities, special budgets and a great autonomy with lots of endowed privileges, but this does not mean that they are totally separated from the executive branch. IRAs are administrative organizations within the executive branch and the 1982 Constitution rules that the executive branch leans on centralized and decentralized administration principles and it constitutes a whole with all its foundations and functions (the principle of indivisibility of administration). The indivisibility of administration is secured by two control mechanisms; that are hierarchical control and the administrative tutelage control.⁶⁹ The agencies organized under the state legal personality depend on hierarchical control of their superiors (the top superiors within the administrative chart are the ministers who are the top political figures), the agencies possessing distinctive public legal personalities are under the administrative tutelage control⁷⁰ of state legal personality. IRAs have public legal personality, but the control mechanism on them is blurred. It seems that there should be an administrative tutelage control on them to ensure the indivisibility of administration due to their status of public legal personality. Administrative tutelage control is issued only for local governments according to the Constitution of the Turkish Republic. Tutelage control can occur between any other two public legal personalities only if it is regulated specifically by law. No hierarchical or administrative tutelage control is considered for IRAs in their

⁶⁹ Administrative tutelage control is a control mechanism that is occurring between two public legal personalities that are authorized to take one-sided executive decisions. In this control mechanism, one public legal personality is accepted as 'center' and it gains the right of executing tutelage control on the other within the context and content determined by law. Administrative tutelage control is applied in order to secure that autonomous agencies are functioning within the boundaries of legal rules and principles. It may include authorizing the controlling central agency with the right of approving, approving by changing, or disapproving the decisions of the controlled public agency. In such a control mechanism, public agencies cannot implement their decisions without approval of the tutelage organ. This control mechanism may be regulated by law with an extensive content such as tutelage organ may disapprove the decision of controlled agency just by finding its decisions against public benefit. This may give arbitrariness to the central agencies and may decrease the autonomy of public agencies excessively.

⁷⁰ Tutelage is not a hierarchical control power, but it gives the center a chance to exercise a limited degree of control over the activities of the local units as to its legality. Tutelage and autonomy are inversely related, that is if tutelage increases, the autonomy of local unit decreases (Polatoğlu, 1999: 60).

establishment laws. Law-makers would consider that regulatory agencies must have a great autonomy with respect to their crucial functions about markets and their role of separating politics from economy. Then, the problem of providing the indivisibility of administration and defining IRAs within the Turkish administrative system in compliance with the framework of the Constitution may arise.

In order to maintain the indivisibility of administration principle, law-makers have founded a practical solution which is still problematic in itself. IRAs are in general defined as administrative agencies ‘affiliated with a ministry’ (ilişkili kuruluş). On the other hand, such an ‘affiliated agency’ definition that is considered within ministerial administrative chart does not exist in Turkish legal system. There are basic service units, advisory and control units, auxiliary units and an undersecretariat within administrative structure of ministries. The other public institutions and associations out of the ministerial structure are organized with the status of “attached institution” (bağlı kuruluş) or “related institution” (ilgili kuruluş) of the Prime Ministry or a ministry within the Turkish administrative structure. Attached institutions⁷¹ are organizations authorized to execute some basic services and functions which take place within the authority of ministry, they are established as attached to ministries with special laws, and they are possessing separate budgets within the general budget. They are generally arranged as general directorates; some examples being General Directorate of State Hydraulic Works (Devlet Su İşleri Genel Müdürlüğü), General Directorate of Security (Emniyet Genel Müdürlüğü), and Presidency of Privatization Administration (Özelleştirme İdaresi Başkanlığı). The relationship between the ministry and those attached institutions which do not have public legal personality is a hierarchical; with those having public legal personality is a tutelage control. However, that tutelage control is so extensive that it also comprises a hierarchical control as well. Related institutions⁷² are the other service-oriented decentralized administrative organizations except attached institutions such

⁷¹ Their status is defined by the Article 10th of the Law numbered 3046 which is about the foundation and basic functions of ministries.

⁷² Their status is defined by the Article 11th of the Law numbered 3046 which is about the foundation and basic functions of ministries.

as public economic enterprises or their joint-ventures. All the related institutions possess public legal personality, so their relationship with ministries is based on tutelage control. Some examples are Turkish Standards Institute (Türk Standartları Enstitüsü), the State Economic Enterprises (Devlet İktisadi Teşebbüsleri), and State Railways of Turkish Republic (Türkiye Cumhuriyeti Devlet Demiryolları) (Günday, 1999: 268-9). The law-makers did not want to define most of the IRAs as ‘related’ to or ‘attached’ to a ministry, but formulated a concept as ‘affiliated’ practically in order to escape IRAs from the administrative control mechanisms on the one hand and to fulfill the constitutional rule of indivisibility of administration on the other.

A closer look at the Turkish administrative system could help to analyze the relationship of IRAs with the executive branch as follows: BRSA, CMB and TTPABMRA are organized as related to a minister of State who will be authorized by the Prime Ministry, the relations of the government with HBRT will be executed by the Prime Ministry, the other five agencies are organized as affiliated with a ministry. CA and SA are affiliated with the Ministry of Industry and Commerce, TA with the Ministry of Communications, EMRA with the Ministry of Energy and Natural Resources, PPA with the Ministry of Finance. Nevertheless, what kind of a control mechanism does the ‘affiliation situation’ include is not determined in the law, so it is open to debate. For instance, Duran (1997: 6) stated that whether ‘the affiliation status’ implies a different relationship that is distinguished from the other known concepts as ‘attachment status’ or ‘relevancy status’ could not be understood. Ulusoy (2003: 37-38) asserted that this affiliation status gives the affiliated ministry the right of recourse to the court against the acts and actions of the IRA which it considers as illegal and the judicial organs would appreciate the applications of the affiliated ministries as they see a public benefit from the abolishment of those acts and actions. Ulusoy also claimed that affiliation status regulation must be considered as the minimization the administrative control on IRAs. Conversely, Karacan (2002; cited in Tan, 2002: 17) asserted that all IRAs should be organized with ‘related institution’ status, because the ‘affiliated agency’ status implies more control on IRAs. The law-makers have brought about ‘affiliated agency’ statement maybe to define a different status distinguished from the status of the ‘attached’ or ‘related’

institutions defined in the law, but the judicial organs do not see any difference between the statuses of the ‘attached’ institutions and the ‘affiliated’ agencies. For instance, the Council of State stated that the relevancy and affiliation concepts are synonymous words, so there is no difference between the concepts of the ‘affiliated agency’ and the ‘related institution’.⁷³

6.5.3. THE PROBLEM OF THE LOCUS OF THE INDEPENDENT REGULATORY AGENCIES IN TURKISH ADMINISTRATIVE STRUCTURE

Turkish administrative structure based on the principles of centralization and decentralization. Article 123 of the Constitution regulates that “The administration forms a whole with regard to its structure and functions, and shall be regulated by law. The organization and functions of the administration are based on the principles of centralization and decentralization.”⁷⁴ As stated within the Constitution, the institutional structure of the Turkish administrative system is composed of central administration organizations and decentralized administration organizations. Centralized administrative organizations are under the hierarchical control of the center. Decentralized administrative organizations have their own public legal personality, so they enjoy administrative and financial autonomy. These organizations are under the administrative tutelage control of the central organizations. There are two sub-groups of decentralized administration

⁷³ With a Prime Ministry circulation (dated 19 July 2002, numbered as 2002/19), the Competition Agency was encountered within the agencies which are obliged to take permission from the Prime Ministry for foreign duties. The Competition Agency objected to this decision to the Prime Ministry and asserted that it is an affiliated agency having administrative and financial autonomy, so to be obliged to take permission from the Prime Ministry for foreign duties would be against its autonomous status. Then, the Prime Ministry asked for advice to the Council of State. The Council of State concluded that “the circulation includes the Competition Agency which is affiliated with the Ministry of Industry and Commerce as well as the other agencies such as the Capital Market Board and the Banking Regulatory and Supervision Agency which are related to the state ministries. The autonomy given to the Competition Agency and the other similar agencies cannot be understood as ‘irresponsibility’, ‘being out of system’ or ‘privacy’. The assumption of the existence of unlimited and uncontrolled public agencies that are taking decisions related to public may imply the creation of ‘states within the state’ which will be the associations against the Constitution.”

⁷⁴ These are the principles determining the structure and functions of the administrative system. Central administration is provision of public services from one center and its field units under the hierarchical control of the center. Decentralized administration is provision of some public services by public legal personalities out of the center, not depending on the hierarchy of it.

organizations which are spatially decentralized administration organizations, popularly called as local governments (provincial local governments, municipalities and village administrations) and service-oriented decentralized administration organizations.⁷⁵ The wide-ranging authorizations of IRAs, their extensive autonomy *vis-à-vis* the executive branch, the blurred control mechanisms and the deficiency of an official definition about their place in administration give way to another debate about the possible locus of IRAs within the Turkish administrative system. Duran (1997: 8) asserts that IRAs are '*sui generis*' organizations, so their place must be stated constitutionally and they must be given a legally defined place in administrative system. For some others as Yıldırım (2000: 205, cited in Sezen, 2003: 140), IRAs can be put into the category of service-oriented decentralized administrative organizations. Some others as Ulusoy (2003: 93) state that, IRAs cannot be put into the category of service-oriented administrative organizations, but they must be put into a third category next to local governments and service-oriented decentralized administrative organizations. Another scholar Akıncı (1999: 375-76) claims that IRAs are put into traditional administrative chart, but they are independent from traditional administrative structure, so they can be defined within a different category at the intersection of legislative, executive and judicial powers.

It is clear that IRAs are not within the category of the centralized administrative organizations, because they are defined as independent from them. Therefore, they can be put into the category of decentralized administrative organizations. Nevertheless, since IRAs are established on the basis of provision of a service that necessitates a technical expertise and specialization and their administrators are not directly elected by people, they cannot be considered as local government units. IRAs are very similar to service-oriented administrative organizations, that both of

⁷⁵ Service-oriented organizations within administrative decentralization are not under hierarchical control of central agencies, they have public legal personality. Decentralized administrative organizations may have only administrative functions, not legislative or judicial functions (Günday, 1999: 45). Local governments are for democratic concerns and local necessities. Service-oriented organizations emerged initially to provide public services that necessitated technical specialization and accumulation. These organizations increase with social state principle and public enterprises increased as service-oriented organizations. The organizations out of central administration, enjoying public legal personality are considered to provide such services more efficiently (Günday, 1999: 47).

them have public legal personality, their members are being appointed by the government, and they are providing public services that necessitate technical specialization and accumulation. However, there are some crucial differences between them as well. First of all, service-oriented administrative organizations are being established to provide a special public service, but IRAs are established to regulate some public-policy areas. The functions and authorities of IRAs are more comprehensive and extensive than the existent service-oriented administrative organizations. Secondly, there is an administrative tutelage control on service-oriented administrative organizations, but no such a direct control is stated by law for IRAs. Thirdly, IRAs are defined as affiliated to a ministry, but service-oriented organizations are regulated as related or attached to a ministry. Finally and most importantly, IRAs are considered as independent organizations insulated from political control and their members cannot be dismissed by the government before the end of their pre-determined term; but political authorities have great authorities on service-oriented organizations including the right of dismissing their members from the office. Therefore, it may be more suitable to evaluate IRAs as a third category of decentralized administrative organizations next to local governments and service-oriented administrative organizations.

6.5.4. THE PROBLEM OF THE ADMINISTRATIVE CONTROL ON INDEPENDENT REGULATORY AGENCIES

The indivisibility of administration is secured by the hierarchical and administrative tutelage controls in Turkish administrative system. However, no hierarchical or administrative tutelage controls are considered for IRAs in their establishment laws. In order to provide a relationship between the IRAs and the executive branch to ensure the indivisibility of administration, law-makers made a word-trick and defined IRAs with the status of affiliation. On the other hand, the meaning of that status is not defined in the Turkish legal system. Therefore, what kind of a control mechanism exists on IRAs is blurred. Yet, the explicit definition of control mechanisms on IRAs is very important, because their degree of independence will be shaped in the context of the controls imposed on them.

IRAs are administrative units, so all their acts are subject to the judicial control as other administrative organizations are (Article 125 of the Constitution). Although IRAs are designed as highly autonomous organizations with enormous regulatory, control and judicial-like authorizations, the judicial organs prefer to make no distinction between them and other administrative organizations. For instance, the Council of State stated in its decisions that IRAs would be judged with the same judicial control principles as other administrative units and no privilege would be assumed for them in examination methods or judicial control mechanisms considering them more independent than other administrative units (Ulusoy, 2003: 52). Moreover, the Council of State sometimes strictly and excessively controls the decisions of IRAs. For instance, it has made not only legality, but also compliance and public benefit controls on the decisions of HBRT in one of its decision.⁷⁶ However, there are also some other decisions of the Council of State in which it calls IRAs as autonomous and impartial organizations.⁷⁷ This indicates that the Turkish judiciary is also indecisive about how to behave to these new unfamiliar organizations. The judiciary has the right to treat IRAs as other administrative organizations, because the status, authorities and controls on IRAs are not defined explicitly by law-makers. Besides, judicial organs may also determine the status of IRAs in their decisions about them, but did not prefer to do this until now. As a result, what should be the content of judicial control on IRAs is a separate issue, which is open to debate. Moreover, different judicial organs are considered as judicial control authorities for different IRAs. For HBRT and CMB, the first degree judgment authorities are regulated as administrative courts, but for other agencies as CA, BRSA and EMRA, the first degree and the final appeal authority is regulated as the Council of State. IRAs have judicial-like authorizations such as extensive sanction and conflict-resolution functions. The determination of Council of State as the first degree and final appeal authority against decisions of IRAs increased the

⁷⁶ The decision of the 10th Office of the Council of State, 24/02/1999, E. 1999/282, K. 1999/663, DTV/RTÜK.

⁷⁷ For details, see: Ulusoy (2003).

criticisms against IRAs, which are accusing them for behaving as first degree specialized courts in their particular sectors and jurisdictions.

Another control mechanism on IRAs is the financial control. Again, there is no standard regulation about the context and content of the financial control on IRAs. Before the enactment of the law numbered 4743 in 2002, there were three different financial control methods for IRAs. In the first, Court of Accounts was authorized to control the CA, TA and PPA. In the second, the Prime Ministry Higher Inspection Board (Başbakanlık Yüksek Denetleme Kurulu) was authorized to control the HBRT, EMRA, SA, and TTPABMRA. In the third, the related minister was authorized to control the BRSA and CMB. On the other hand, there are many unclear issues in these regulations. For instance, the related minister may have BRSA controlled by a commission composed of a controller from the Court of Accounts, an inspector from the Prime Ministry and a controller from the Minister of Finance. Nevertheless, no regulation is made about the content of control of the related minister on CMB. Likewise, within their establishment laws, it is stated that the Court of Accounts may control the accounts of the CA (Law numbered 4054, Article 33) and PPA (Law numbered 4734, article 53/k), but for TA (Law numbered 4502, Article 14), there is no statement about accounts and it is only stated that the Court of Accounts may control the TA. Similarly, it is regulated that the EMRA, SA and TTPABMRA may be controlled by the Prime Ministry Higher Inspection Board, but whether this is a financial control or other type of control is not clear. At the end, for a general regulation in 2002, by the Law numbered 4743 dated 30 January 2002; it is stated that the financial control of all the IRAs will be made by a commission composed of an inspector from the Prime Ministry, an inspector from the Prime Ministry Higher Inspection Board and a controller from the Ministry of Finance.⁷⁸ This regulation may also be seen as an attempt to take IRAs which are being criticized for enjoying uncontrollable independency under the legislative control (Sezen, 2003: 182). On the other hand, there are also objections against this

⁷⁸ The President sent this law back to the TGNA to be negotiated again for the reason that the financial control should be made by the Court of Accounts, but the TGNA accepted the law without change again and the President had to promulgate it.

regulation asserting that it may spoil the independence of IRAs because all the control authorities are under the effect of the government (Karacan, 2002: 80).

There are complex regulations about IRAs and their laws were changed many times in order to clarify their relationship with the central administration and the controls on them. As it is evident, there are several regulations about the autonomy of IRAs, but one may identify a general trend to increase the autonomy of IRAs. However, the law-makers have left unclear points in the laws about the control of the central administration which may be interpreted either in favor of or against the independency of IRAs. The law-makers' attempts to clarify some issues unfortunately led to new indeterminate points. For instance, in the 17th Article of the Law numbered 2499, it was articulated as "the related ministry will control the annual accounts and all the acts of CMB and will take all the necessary measures it deems necessary. It will prepare a report to the Council of Ministers about the consequences of control and the taken measures." Here, the statement of "to control all the acts of the IRA and to take necessary measures" may imply a more strict control than administrative tutelage on the one hand, but it may also imply no effective control and may be seen as a information-giving process of IRA about its acts and actions to the Council of Ministers on the other. This statement was changed by the Law numbered 4487 and regulated as "the related ministry will make control on the annual accounts and expenditures of CMB and will take necessary measures related to the consequences of control. Then, related ministry will prepare a report including the consequences of control and the stipulated measures related to them and will present these to the Council of Ministers." This change has defined the context and content of the control, so it has favored the independence of the IRA. Nevertheless, still, what kind of a decision Council of Ministers can take is not stated within the law. This leaves an arbitrary point and weakens the independence of the IRA. A similar control and presentation of report process is regulated for BRSA by the Law numbered 4389 and it is stated additionally that the report will be approved by Council of Ministers. This time, what may the Council of Minister do is stated in the law, but what would happen if the Council of Ministers does not approve that report is again open to question. These blurred issues may be interpreted in favor the

independence of IRAs and it can be stated that the Council of Ministers is left almost dysfunctional about most of the decisions of IRAs. However, the opposite may also be claimed; there are also attempts of politicians to restrict independence of IRAs from time to time. For instance, all the IRAs have public legal personality, so they may issue by-laws (Article 124 of the Constitution), but within the establishment laws of some IRAs, it is regulated that the by-laws of those agencies can be put into execution by the decision of the Council of Ministers (Tan, 2002: 17). Likewise, government issued a DFL no 631 that regulates the financial and social rights of public personnel and it has included IRAs within the scope of the regulation about wages. Such regulations may hurt the independence of IRAs.

To sum up, even though IRAs are organized as administrative bodies affiliated with central administration, there is no legal status defined as “affiliated with” in Turkish legal system.⁷⁹ This was done to satisfy the indivisibility of administration principle, but resulted in complexities in the applications in practice. There is no standard model about IRAs in Turkey, many complex regulations have been made about their organization, characteristics and authorities and this situation caused endless debates on them. Continuous changes have been made about IRAs, sometimes with the objective to adapt them to the Turkish administrative system, sometimes to regulate them as independent units just like their international counterparts and sometimes with complicated interests of politicians. Moreover, their status, degree of autonomy and the controls imposed on them are not clearly defined within the laws which may result in arbitrary interpretations in practice. However, there is a high sensitivity about their independency in society, media and international organizations, so interferences of politicians are highly restricted on them officially and their free functioning is currently seen as the guarantee of a well-functioning economy.

The legal status of IRAs should be clarified more and new definitions of autonomy, administrative organizations, and new methods of control and authority mechanisms

⁷⁹ This definition will take place in Turkish legal system in 2004 by the basic law of public administration approved in Assembly in June, 2004 which is waiting for the approval of the President for being valid.

must be defined in legal texts immediately. Nevertheless, as IRAs are new and unusual organizations located within traditional administrative systems and they are endowed with crucial public policy-making power in their sectors, such ambiguities become more important. Two main factors probably play a role in this situation; one is taking foreign models per se, without any necessary revision due to the pressures coming from international agencies such as IMF, WB and EU. The second one is that law-makers were reluctant about the creation of IRAs, but they felt themselves obliged to establish them to recover from severe economic crisis situations and to get access to negotiations with the EU. As a result, they did not locate them within the Turkish legal and administrative system with a systematic reform analysis, but tried to adapt them to it with some word-tricks and unclear statements.

A final problem remains that politicians, in general, have an habit of leaving some deficient points in laws and regulations which will provide them with the possibility of taking arbitrary or pragmatist decisions in that points according to different conditions.

6.6. THE INDEPENDENT REGULATORY AGENCIES IN TURKEY: A GENERAL EVALUATION

The emergence and development of IRAs in Turkish administrative system are the outcomes of a long and complicated process since the 1980s. By this date, Turkish government decided to give up its static, state-led and rule-bound economy and started to support market-oriented policies, economic liberalization and a market-led growth model based on export-orientation and drawing more foreign investment. The successive political and economic crises and the pressures put by the international agencies like the IMF and the WB for debt-financing have played the key role in this policy decision. Yet, it was difficult to achieve such a drastic transformation suddenly within the regulatory context of the highly-centralized state structure, traditional bureaucratic system, political culture, and the vested political and administrative traditions of Turkey. Although most of the Western countries preferred to set up a new regulatory framework that bears a total change in their

political and administrative systems such as the establishment of IRAs and replacing traditional administration with public management principles in order to implement new liberal economic policies, Turkish policy options were to apply new economic reforms through alternative political agencies established parallel to the traditional administrative structures and could not substantiate popular managerial reforms within the public sector adequately. Those alternative agencies comprised councils and undersecretariats which were under the rule of political authorities; organizationally separated from the general administrative structure and endowed with extraordinary powers to apply neo-liberal economic reforms without parliamentary influence and approval and without taking the demands and needs of the majority of the population into consideration. In the meantime, vested corrupt interest relations persisted in both the public sector and the private sector in this new model. Especially, rent seeking by interest groups through state resources, politicization of the new alternative agencies regulating the economy, corruption in the public economic enterprises and the inappropriate practices of privatization led to an increase in public deficits. These problems reinforced and supported the argument of the ‘public sector failure’, which was one of the basic tenets of the public choice theory.

Liberal economic policies’ logic was problematic and inconsistent in itself. While economic liberalization has turned the Turkish market into an import champion; corrupt relations in the private sector remained intact; and inflation, interest rates, public debts and unemployment rates boosted in the 1990s. Moreover, instead of attracting more foreign direct investment and achieving high economic growth through exports, which were the expected outcomes at the beginning of the liberal economic policies in 1980s, Turkey faced with a heavy economic burden and remained vulnerable to the short-term capital flows. The aspiration of a sound macroeconomic balance and sustainable growth failed and Turkey depended on financial capital flows which sought for quick profits, in order to survive and continue to be eligible for credits provided by the international agencies.

Within this economic chaos environment, Turkey did not follow a systematic and comprehensive administrative reform to make its political and administrative structure more efficient and effective, and an alternative economic reform program that may ensure the economic growth and development with its own resources. Instead, the absence or the lack of political and administrative infrastructure to support neo-liberal policies was shown as the source of economic problems.⁸⁰ Hence, Turkish governments did not renounce to neo-liberal economic policies, but continued to implement them in order to recover from economic problems. Moreover, they started to apply new political and administrative structural adjustment reforms to establish the infrastructure of the neo-liberal economic understanding, under the pressure of the credit agencies such as the IMF and the WB in the 1990s. It is in that context that important reforms in public administration system and the establishment of IRAs to regulate economic sectors came into the public agenda. Even though, Turkish policy-makers were not able to implement new public management reforms to transform the whole public administration system effectively and adequately, they considered IRAs as a means to cope with and recover from the successive economic crises.

The process to EU membership was another vital factor in the initiation of the regulatory reforms of Turkey in the 1990s. EU membership required important reforms in political, administrative, social and economic areas including the creation of competitive market conditions and the establishment of trustworthy apolitical IRAs for the candidate countries including Turkey.

It is also important to underline the role of the domestic factors such as the loss of trust to politicians as a result of enduring economic problems and political instabilities, technical complexity of some policies, the need to regulate privatized sectors and speed up privatization for more free market economy, and to provide effective decision-making, judgment and regulation in strategic areas for the public, which have been also influential in the emergence of IRAs in Turkey. Yet,

⁸⁰ See: OECD (2002a)

international factors as the pressures put by the international agencies (the IMF, the WB, the WTO, the OECD, the EU) seem to be more effective and determining in the emergence of IRAs in Turkey than the domestic factors such as corrupt political relations, outmoded traditional methods and practices of administration and the opinion of politicians or private sector that consider IRAs as necessary.⁸¹ It is interesting to observe that, especially between 1999 and 2002, most of the regulations related to IRAs were made under the complaints of the policy-makers who declared, in diverse occasions, that they were making those changes (as called by them; “bad medicine”) under the pressure and obligation to satisfy the international demands. For instance, even the Prime Minister of Turkey, Bülent Ecevit, who has played the leader role in the establishment of many IRAs, has complained about the independence of IRAs by stating:

I have to admit that we have lost the measure about autonomy of regulatory agencies. Regulatory agencies were told as ‘the necessity of market economy, the requirement of democracy, the desire of the IMF.’ Many public agencies have been created out of the influence and control of state and government and they have become uncontrollable and unruly agencies.⁸²

and added that

...the state has been left out of banking and all other strategic policy making areas at all. We may bear to this situation, but the people would not.⁸³

⁸¹ For instance, according to Buğra (1985: 106, cited in TÜSİAD, 2002b: 70), although the businessmen in Turkey criticize the state for many different reasons, they accept the extensive existence of state in economy as a natural condition in Turkey. They even do not complain about the bureaucracy in general. Their basic concern is the interventions of state which are creating indefinite situations in economy. From this point, they may support IRAs only with the expectation of stable policies from them. One may also interpret this quotation as that the businessmen have always seen state as a natural partner and rent-seeking area in their business.

⁸² Radikal, 28.03.2002.

⁸³ Cumhuriyet, 28.03.2002.

The establishment of IRAs succeeded successive economic crises processes, so the laws establishing IRAs and regulating their status, authorities, functions and place within the Turkish administrative system were prepared very rapidly, generally by direct inspiration from their foreign models in developed countries without allowing a deepened and detailed analysis. Besides, IRAs themselves were specific and unfamiliar organizations for the Turkish administrative system and political culture, thus the creation of such highly autonomous authorities in the Turkish administrative system was problematic due to the Constitution of Turkish Republic, legal and juridical structure, and political and administrative systems. As a result, many problems, inconsistencies and conflicts emerged about the adaptation of IRAs to the Turkish legal system, administrative structure and state traditions. Moreover, the inconsistent and ambiguous regulations of law-makers about IRAs due to their political concerns and the pressures coming from international agencies aggravated the problems about the possible and the existent legal and administrative place of the IRAs in Turkey, the discussions of which are still relevant almost after ten years of the experience with the IRAs.

IRAs are criticized for being not only administrative organizations in practice, but for emerging as the fourth branch of power in Turkey together with the legislative, the executive and the judiciary. They are defined as *sui generis* or *hybrid* organizations due to their enormous rule-making, executive and juridical powers and a threat to democracy for the potential to summon three basic powers of state in their single entities. Their functions, independence status, and granted authorities have created problems for locating them within the Turkish administrative system as a whole. They are constituted as affiliated with a ministry in order to secure the indivisibility of administration principle which is a constitutional rule in Turkey, but the absence of such a legally defined relationship in Turkish administrative system has created many problems about how to define their relation with the executive branch and what kind of controls the central administration may impose on them. In spite of all legal difficulties, law-makers have tried to mount IRAs to Turkish legal system and adjust them to Turkish administrative system. This was a difficult process, because on the one hand IRAs were tried to be adjusted to the Turkish administrative system, and on

the other hand, their independent, highly authoritarian, and non-majoritarian character were tried to be kept to satisfy the establishment mentality of them.

Many changes have been made within the establishment laws of IRAs by time in order to make them more compatible with their foreign models in terms of independency, credibility and accountability as required by the international agencies. However, sometimes those changes were also made with political concerns to get some concessions from their independence such as to increase the influence of politicians over them. Of course, only the politicians or the traditional legal and administrative system of Turkey could not be blamed for all these problems. IRAs are agents of neo-liberal policies, and they are here to implement basic principles of neo-liberalism. Therefore, the model, organization and functional duties of IRAs should be criticized heavily as well as the basic principles of neo-liberalism. It is no doubt that the Turkish legal and administrative system needs a comprehensive reform, but whether it may be achieved in the right way through the enforced neo-liberal models and external technical and managerial principles conflicting with the economic, political and administrative realities of Turkey or not must be seriously questioned.

Another important fact remains that there are still many legal deficiencies, inconsistencies and contrasting points about the role, status, authorities, functions and place of IRAs in Turkish legal system. There is even no consistency in terms of organization, independence rate or powers between the IRAs regulating different sectors in Turkey. However, it should also be taken into consideration that there is even no standard model of IRAs in the world. The basic reason for that is that they are being shaped by the domestic conditions of each country, but more importantly the satisfaction of the basic principles of IRAs requires crucial transformations in all other political, administrative, economic, social, and even the cultural areas of countries within the guidance of neo-liberalism as well. This is the point that most deserves attention, because it gives clues about the basic role and function of IRAs, and what they are serving for.

IRAs regulating markets generally enjoy more independence than IRAs regulating environmental issues or those protecting the basic rights and liberties. Likewise, some IRAs regulating crucial market domains such as financial markets are organized more independent than some others regulating other market domains that are respectively less important. This indicates the international agencies give more importance to independence of some markets than others, which seems to be probably shaped in accordance with the needs and demands of the global capital flows. For instance, the CMB is organized as more independent and granted more authorities than the SA or the HBRT in Turkey. This preference is due to the fact that the status and the powers of IRAs are generally being shaped with respect to the international concerns or orders of the IMF, the WB and the EU. This statement should not be considered as an exaggeration, because it is possible to observe numerous examples where IMF even intervened to the appointment process or the daily operations of IRAs in Turkey.⁸⁴

Another specific point about Turkey, which differentiates it from other countries where IRAs exist, is that there are independent agencies regulating the industries of the sugar, tobacco and alcoholic beverages and public procurement areas in Turkey. These agencies were again established by the requirements of the IMF and the EU, but the reasons of their establishment are still open to question. It is difficult to find IRAs established to regulate the industry of agricultural products such as sugar and tobacco in other countries.

In spite of the complicated and contrasting regulations about IRAs in Turkey and various discussions about what should be the suitable status, powers, functions, and place of them in Turkish administrative system, it is still possible to derive some general conclusions. First of all, all the IRAs enjoy an important degree of autonomy

⁸⁴ In the year 2001, the BRSA wanted to rehabilitate some intricate banks as Bayındırbank, Kentbank, Sitebank, Tarişbank and EGS Bank instead of taking them directly to the SDIF and requested 3-4 four weeks from the WB and the IMF for rehabilitation. However, the WB accepted, but the IMF objected to rehabilitation and dictated the BRSA to seize the banks as early as possible. This note was declared directly by the chairman of the BRSA (Milliyet, 11.07.2001, p: 8, cited in Sezen, 2003: 134). In addition, it is important to emphasize that most of the banks taken into the SDIF were sold to international corporations with very low prices.

from the political control. This is done through statutory appointment procedures, and administrative, human resources and budgetary autonomy. Secondly, all of them are established by special laws, have public legal personality and possess crucial regulatory, control and sanction authorities in their policy-areas. They also have consultative, conflict-resolution and research functions to solve conflicts between the actors in their sectors, to inform government and public about their functions and to support researches and educational facilities for well-functioning and development of market economy. Thirdly, the acts and actions of all IRAs are subject to judicial control. There is no hierarchical or administrative tutelage control on them. They are partly accountable to parliament as well, it is done through examination of annual accounts and expenditures of IRAs by a commission composed of the representatives of the Court of Accounts, the Prime Ministry and the Ministry of Finance. Fourthly, the members of the IRAs are appointed by the Council of Ministers (except HBRT) directly (in EMRA), or among the candidates nominated by the ministers, representatives the capital and labor organizations and some NGOs related to regulated sectors (CA, TA, CMB, SA, TTPABMRA, PPA), or only by the proposal of the related minister (BRSA).⁸⁵ In the case of the HBRT, the Turkish Grand National Assembly (TGNA) appoints five members nominated by the political party (or parties) in power, four members nominated by the biggest opposition party. The determination of the members of the IRAs by different associations in the sector or by only the ministers may weaken the independence of IRAs, but no ‘magical formula’ has been found about the appointment process of the IRAs through which the accountability and independence of IRAs would be secured. Fifthly, the number of the members of the decision-making boards of IRAs varies between five and eleven.⁸⁶ The members are elected usually for a fixed period of four, five or six years

⁸⁵ This regulation was made about the BRSA with the Law numbered 4491 in 2001 which was promulgated to change the Banking Law numbered 4389 dated 1999. The previous regulation in the Law numbered 4389 was that the members of the BRSA would be nominated by the The Union of Turkish Banks, the Ministry of Finance, the Undersecretariat of the Treasury, the State Planning Organization, the Central Bank and the Capital Market Board and they would be appointed by the Council of Ministers among the candidates nominated by those agencies.

⁸⁶ The decision-boards of the IRAs take their decisions with the majority vote principle as a general rule. As a result, the number of the members of the boards should be an odd number for avoiding a deadlock. However, all the IRAs have odd-numbered members but the board of the PPA has ten members. This may create some problems in practice.

and they cannot be removed from the office before their term expires for reasons other than explicitly stipulated by the laws. Sixthly, there are important qualification requirements stipulated by laws and these include experience and professional credentials (e.g. degrees in law, economy, finance, business administration, political science). Seventhly, the members of IRAs are also governed by the civil service law, so they cannot be members of a political party. The members of an IRA cannot work in the firms acting within the area of that IRA, but this is not being applied effectively in practice in Turkey. Moreover, the members of the IRAs (except PPA) can be elected for a second term in Turkey. This may be interpreted as a deficiency about the independence of IRAs, because the members of IRAs may act in favor of political requests or interests of private groups in order to be re-elected or to have a well-paid job in the firms of those private groups at the end of their term. Eighthly, IRAs' resources are primarily funded on the basis of fees for licenses/permits, fines and levies. It is a fact that, to have adequate financial resources is very important for the independence of IRAs, but the right of IRAs to include the fines they impose in their account tables as revenue may be criticized, because this may shade their impartiality in their decisions. Ninthly, the personnel of IRAs are generally recruited on the basis of 'contracts' which constitute a separate category of employment in state institutions. Contracts allow for higher remuneration levels; remuneration is usually linked to the salaries in the sector and this helps to attract qualified experts from the private sector as well. Another popular reason for higher levels of remuneration is to satisfy the members of the IRAs, which may prevent them from being involved in corrupt relations with the private interest groups within the sector. This is seen important for their independence from the 'regulatory capture', but also criticized for creating discrimination in public sector (application of different salary for the same work) and for being an indicator that the state does not give due importance to other public sector areas. There are also civil servants within the organization of IRAs, but IRAs enjoy important autonomy about their personnel systems such as in issues of cadre, employment rate and remuneration. They have specific personnel regimes peculiar to themselves which do not even constitute a totality in itself or show consistency with each other.

IRAs are very popular organizations nowadays either with their privileged characteristics compared to other public institutions and their debatable situations in Turkey. Despite many critics about IRAs or complaints about how to define them, there is a rising regulatory authority trend in Turkey that constitutes an important initiator of transforming the Turkish centralized and bureaucratic productive state into a regulatory state. In any related or non-related public policy area, if there is something wrong; to establish an IRA to regulate that policy area might be swiftly proposed. For example, there are propositions to establish new IRAs in issues of health, transportation, sea works, environment, football and the like.⁸⁷ However, it should be stated that these propositions are made within a hegemonic process led by the advocates of neo-liberalism and IRAs, not as a result of the actual success of the IRAs in the regulation of their market domains. The financial and administrative autonomy, and the various privileged endowments of IRAs attract other bureaucratic public organizations as well and they might also desire to gain conditions of an IRA. As a matter of fact, Karacan (2002: 156) argues that the success and role of IRAs may accelerate the transformation in the Turkish administrative structure and may ensure the creation of more IRAs.

IRAs emerged to regulate markets and contribute to their development; to narrow the possible public policy areas of politicians, especially those related to market and economy, to provide stability and credibility in policies, to provide marketization of public services, to realize public management reforms and to transform the public administration system in Turkey. Privatization process had not been achieved effectively due to political interests and societal sensitivity in some sectors, so IRAs are expected to help privatization by presenting themselves as the guarantee of protection of basic rights and liberties of the public in privatized sectors. IRAs were also created to control state policies and their implementation process as well. For instance, PPA is authorized to control the procurement processes in all public institutions. IRAs also became functional in restricting supportive policies of state and control production of Turkish farmers in order to provide advantaged conditions

⁸⁷ For details, see: Karacan (2002).

for international firms even in the competitive market areas, the establishment of the SA and the TTPABMRA can be cited as such examples. Finally, though politicians complain about IRAs in general, they use them as the “scapegoat” for many enforced neo-liberal policies as well.

IRAs regulating the markets are thus created to serve the neo-liberal principles in general, but many hegemonic slogans were used to justify their creation in addition to arguments of public choice theory, new public management, and governance in Turkey. Two of them were very clear: First, they were told to be established so as to protect the common good in the strategic and privatized public sectors and second, they were told to secure the basic rights and liberties of the people against the abuses of the private sector and the state. However, in practice, they do not seem to provide such functions completely, because their priority is always to regulate markets in accordance with the neo-liberal market principles and neglect any other factors such as the socio-economic conditions of people or the public benefit.⁸⁸ One may see the real mentality of the emergence of IRAs in Turkey from the publications of the consultative international agency about the regulatory reform in Turkey, which is the OECD. Within the Report of the OECD about Turkey, the emergence and organization of IRAs in Turkey is explained as follows:

As many OECD countries, Turkey is building market-based institutions to provide regulatory oversight in liberalized sectors and to separate ownership, policy development and day-to-day regulatory overview. Such an endeavor is particularly important for countries like Turkey, as foreign investors tend to base their long-term decisions on an impartial and effective regulatory institution at arms' length from the political influences. In practice, this means that a successful operation of sectoral regulators and appropriate

⁸⁸ The Presidency of Privatization Administration sold 65.76% share of Türkiye Petrol Rafinerileri Anonim Şirketi (TÜPRAŞ) (Turkish Petroleum Refineries Joint Stock Company) to private partnership firm in 2004 and CA approved this sale. The case went into court and at the end of court process, Council of State annulled the sale decision of administrative authority with the reason that it was against public interest due to its very low sale price. Then, criticisms arised against CA questioning how it gave permission to this sale with that price. The charmain of CA defended their decision by emphasizing that they are not evaluating whether the sale is against public interest or not, but rather whether it suits stipulations of competition or not (Hürriyet, dated 25 May 2004). This is a good example indicating the major role of IRAs and whether they are serving to private or public interest.

oversight of liberalized markets requires adequate design linking sufficient independence from ministries and firms being regulated, with accountability mechanisms to avoid fragmentation of policies, and the resources and skills to provide credibility. (OECD, 2002b: 36).

Within a comparative perspective, one may argue that IRAs play a key role in public sector reforms in Turkey. Almost all the new arrangements are being applied first through IRAs. Neo-liberal economics, public choice policies, new public management reforms and governance approach have been effective in the emergence and proliferation of the IRAs in the world. In Turkey, the emergence of IRAs was inspired from public choice arguments, new public management movement and governance discourse, but the pressures of the international organizations as the IMF, the WB, the EU, the WTO and the OECD have been more influential in their emergence. Turkey preferred to change its policies first and started to apply neo-liberal reforms in the economic arena, but postponed to create its institutions effectively about two decades.

One has to add that international agencies requesting the establishment of IRAs and other public sector reforms from Turkey were using the arguments of public choice, new public management, governance, and neo-liberal economics in general in order to justify their demands. The criticisms against politicians and bureaucracy, the corrupt character of Turkish political and administrative system, bashing the traditional administrative methods and legal systems, the notifications about the evils of intervention of Turkish state to market and politicization of economic policies, and the hegemonic slogans about the necessity of privatization and marketization of public sector in Turkey were similar to the arguments used by the public choice theory and new public management approach. The importance of sharing public authority with associations external to the government was instilled by governance discourse. Most importantly, the appointment process and the structure of decision-making boards of IRAs, which include representatives of different societal associations, shaped in accordance with the governance model. Nevertheless, there are also serious criticisms against this governance model that the associations

participating to decision-making boards of IRAs are highly limited and they are generally composed of representatives of the capitalist associations and private corporations in the sector.⁸⁹ For this reason, through such a composition, the question of whether IRAs will secure public interest or the interest of a private segment of society becomes more meaningful. This situation may also weaken the independence of IRAs with respect to private interest groups and may end up with regulatory capture by those groups.

To conclude, Turkey followed a different path about reforms in the post-1980 period. Turkish governments tried to implement neo-liberal economic reforms for realizing an export-oriented growth model and for establishing a liberal economic system attracting more foreign investment, but could not achieve or did not prefer to establish a comprehensive institutional neo-liberal structure. As peculiar to Turkey with regards to the USA and the Western countries, Turkish governments had to establish IRAs as a result of unbearable economic crises and pressures of international agencies such as the IMF, WB and EU in a top-down manner before they had achieved an extensive neo-liberal and managerial structural reform. Yet, it seemed that IRAs would serve as an initiator of those other institutional managerial and neo-liberal reforms.

It is observed that the development of IRAs has accelerated the public sector reforms in other areas and they constitute a model to them with their organization, functions, administration methods and principles, and personnel systems. The general transformation reform in public administration had been initiated in 2002 in Turkey by a new one-party government; it was completed in 2003 and accepted by the TGNA in 2004. This may be seen as the real new public management reform of Turkey which has interestingly come after emergence of IRAs in Turkey. The development of IRAs also necessitates a comprehensive reform in judiciary, because all the acts and actions of the IRAs are subject to judicial control, but there is no adequate specialization or expert offices in judiciary that may sufficiently judge the

⁸⁹ For details, see: Güler (2003).

technical and complex issues regulated by the IRAs. Bearing the juridical-like functions of IRAs, the delay of such a reform in Turkey may result in the fact that IRAs become not only as administrative policy making organizations, but as specialized courts in their issues as well.

CHAPTER 7

SUMMARY AND CONCLUSION

In this study, I tried to explain the reasons, sources, consequences and dynamics of the sudden emergence and spread of IRAs in a specific period, namely, 1980s and 1990s. This topic is directly related to the rise of the neo-liberal thought; the movements of globalization, privatization and liberalization of markets as universal practices; the assertions of the ending of interventionist state models; the debasement of majoritarian politics and traditional bureaucracy, and the rise of governance models and public management movements. Within the scope of this thesis, following a review of the possible functional and contextual reasons of the emergence of IRAs, I analyzed public choice theory, new public management movement and governance approach, and discussed their role in the emergence and spread of IRAs in the 1980s and 1990s in detail with due emphasis on the above mentioned specific agenda of this period. Then, I located the Turkish experience in this historical context and theoretical framework.

As to the summary and concluding remarks of this study, the following may be stated. IRAs are new and unfamiliar public organizations. They use public resources; are in general established by the initiative of law-makers; and have extensive powers such as regulation, rule-making, execution, control, conflict-resolution and imposing wide-ranging sanctions when they deemed necessary. They are a part of state, but they do not depend on the extensions of legislative, judiciary and even the executive in many countries. Moreover, their institutional design, functions, powers delegated to them, controls imposed on them, their relations with the other organs of state and their relative statutes vary in different countries, even in different domains within the

same country. Their originality, differences from the pre-known administrative units and in addition, the cross-national and cross-domain variations between them makes it a more arduous task to make a general definition of them. Despite all these problems, IRAs has an essential emergence rationale and this rationale constitutes the basis of emergence and sudden spread of IRAs many different countries of the world which have different economic, political, administrative and social systems. It is asserted in this thesis that the basic rationale of the creation of IRAs was to generate and secure an untrammelled free market system insulated from the influence of the majoritarian politics and to change the embedded habits of administration. Following this basic rationale, an IRA may be defined as an agency having its own powers and responsibilities under public law; being organizationally separated from ministries; neither directly elected by people nor managed by elected officials. These characteristics are also the minimum requirements of being an IRA, and all IRAs should bear at least these properties in any legal and administrative system. From this point, it can be argued that, IRAs are here to avoid arbitrary intervention of politicians and traditional bureaucracy to market and so, to provide well-functioning of markets, to increase managerialization and marketization of public sector, and privatization of public services. In order to achieve their ends, they are insulated from political control, separated from traditional bureaucracy organizationally and functionally, and are charged with the regulation of markets within the principles of the market theory under the guidance of the neo-liberal tenets. The international organization which plays a leading role in determination of regulatory reform in many countries, OECD (OECD, 2002a) claims that the regulatory reform is vital for a well-functioning market economy and those countries, which want to build a market economy, should apply the regulatory reform as well. The key element of this reform is probably the establishment of IRAs.

The probable reasons behind the emergence and spread of IRAs were analyzed intensely under three categories within the thesis: functional, contextual and other reasons such as public choice theory, new public management movement and governance approach. Through functional reasons, which are mainly related with benefits politicians would have seen in delegation of authority to IRAs, the following

points are emphasized: First, IRAs would be functional for them to shift blame for unpopular decisions and policy failures, so they might escape from electoral punishments. Second, regulation has become a much more technical issue in some policy areas, especially economic areas, so politicians see it beneficial to create specialized agencies as IRAs that may provide expertise regulation with high technical capability. Third, increased complexity in many policy areas drive politicians to delegate authority to IRAs to make effective policies in those areas, reap benefits and avoid excessive costs. Fourth, IRAs would solve credible commitment problem which were aroused as a result of unpredictable activities of successive governments and would provide stability and credibility in policies to investors in the market. Fifth, international organizations such as IMF, WB, and EU are very effective in making global regulation policies comprising many countries; their demands create an impetus to create IRAs at the national level. Sixth, IRAs were presented as a salvation prescription that might provide an alternative to traditional bureaucratic structures and administrative habits which were under a huge popular attack in 1980s. Although, functional reasons were partly explanatory for the emergence of IRAs, they were not sufficient to explain the cross-national and cross-domains variations and the sudden spread of between IRAs in many countries in 1980s and 1990s.

As contextual reasons, the following points were emphasized in the study: First, policy learning and institutional isomorphism was a factor which means that when politicians see a successful example of an institution in another country, they usually incline to import that model into their own country. This situation could explain the sudden spread of IRAs in many countries within a specific period of time. Of course, the pressures coming from the international agencies such as the IMF, WB and EU for the establishment of an IRA were also a major factor in this urgent isomorphic institutionalization, especially within the Third World countries. Second, state traditions and structures played an important role in the determination of the organization, authorities and functions of IRAs in different countries, so this factor might be instructive in explaining cross-national and cross-domain variations. Third, political life and experience of countries were also important contextual factors. The

power, harmony and stability of political authorities were influential in the determination of establishment, organization, authorities and functions of IRAs. Fourth, various reforms in administrative, economic, political and social areas played a crucial role in the emergence of IRAs.

In terms of other and theoretical reasons, the public choice theory and its practices, new public management reforms, arguments and model of governance approach were analyzed in chapters 3, 4, and 5 respectively. It is important to emphasize that the content of other reasons have close interactions with and implications for the other functional and contextual reasons.

The public choice theory was one of the important factors which played a critical role in the formation of the framework that gave way to the creation of IRAs. It is argued within this study that the basic rationale for the emergence of public choice theory was the constitution of a counter attack to the interventionist economic theories of the post-2nd World War era. This theory rejected the ‘market failures’ doctrine of the neo-classical economics and asserted that it is the ‘public sector failure’ that causes economic and social problems. Public choice theory assumed that the public sector was composed of self-seeking bureaucrats working to maximize their bureaus and budgets and of self-seeking politicians intervening to market with populist policies and taking arbitrary decisions spoiling economic system in favor of majority at the expense of the minority to be re-elected, though they pretended to do these on behalf of the so-called “public interest”. Their actions were in collaboration with self-seeking voters and interests group and public choice theory defined all this system as ‘public sector failure’. Since public choice theory developed as a part of neo-liberal economics, it favored a minimal state and a self-functioning competitive market economy. The main function of the public choice theory was the destruction of ‘good will’ for political and bureaucratic structures, for interventionist economic models and for majoritarian electoral systems. It aimed at eliminating the trust to majoritarian political systems and traditional bureaucracy, extolled free market economy, strived to take state out of market and supported the development of alternative structures in the public sector.

In order to institutionalize the neo-liberal free market order, constitutional economics approach emerged as a part of public choice theory, and favored organizing neo-liberal economic principles constitutionally and avoiding the intervention of successive majoritarian political authorities to change this neo-liberal order. In addition to this, public choice theory favored privatization, public sector reforms as increasing competition between public departments, decentralization of government bodies, devolution of public services and running public organizations as private firms.

All these arguments put forward by public choice theorists opened the way for the creation of IRAs and provided the basis for their justification. IRAs were supposed to be insulated from successive political authorities and the traditional bureaucratic structure are emerged firstly to provide regulation in privatized sectors for avoiding the transformation of public monopolies to private monopolies, then in time, undertake regulation of all market sectors to provide well-functioning of the free market system in competition. Of course, public choice theory may take a critical position against the potential danger of capture of managers of IRAs by interest groups or self-seeking behaviors of them. On the other hand, it is also a fact that IRAs greatly ensures the fulfillment of the basic propositions of public choice theory which are the destruction of welfare economics, avoiding arbitrary intervention of government to economy, insulation of market regulation process from politicians and bureaucrats, provision of a competitive free market economy functioning within the neo-liberal principles, and finally increasing privatization and marketization of public sector.

New public management (NPM) has played a crucial role in emergence, spread, organization, management principles, and functioning rationale of IRAs. NPM movement developed as a complex and multi-dimensional approach composed of different theoretical origins such as the public choice theory, managerialism, transaction-cost economics, the neo-Austrian school and inspirations from previous public administration paradigms and has continuously reproduced and renewed itself

by taking many different neo-liberal reforms into its content. NPM movement essentially aimed at proposing alternative ways of governing in place of traditional public administration system. It declared the traditional organizations, method and practices of public administration as too bureaucratic, inefficient, unresponsive, ineffective and cumbersome and proposed not only many public management reforms, but also endorsed the basic tenets of public choice, neo-liberalism and market economics to realize a 'revolutionary' transformation in the public administration systems.

To realize this transformation, NPM had many propositions: Firstly, it advocated the application of private sector principles (principles of management) directly to the public sector and functioning of public organizations with the same rationale of a private firm. Secondly, it has brought to the agenda the separation of policy-making and service delivery, and transfer of delivery of public services to private sector as much as possible through privatization and contracting-out methods. Thirdly, it favored disaggregation of public sector and creation of a polycentric public management system. Fourthly, it has rejected the rule-based and input-oriented administration system and supported stressing outcomes rather than inputs in decision-making and service provision. Fifthly, it has brought the performance measurement in administration, favored increasing the power of public managers and evaluating their efficiency of public agencies and managers on the basis of pre-determined performance criteria. Sixthly, it proposed that public organizations should see citizens as customers and serve them according to this mentality. Seventhly, it suggested enhancing flexibility in administration, competition both in market system and public sector and finally, marketization of public sector with all perspectives as much as possible. Since NPM had close ties with the neo-liberal discourse, it rejected the intervention of the state to the market and favored a less-costly, small but effective state providing impartial and improved regulation contributing to development of markets.

The 'reinventing government' approach as a part of NPM movement which was originated in the USA also endorsed the same ideas as NPM and proposed that

government must act like an enterprise and all government mechanisms must be renewed under the guidance of market principles. Both NPM and the 'reinventing government' approach have been highly influential in many countries of the world, and they were offered by international agencies such as the IMF and WB, especially to the Third World countries to renew their public administration systems under the guidance of their principles. They have played a key role in preparation of the framework and mentality in many countries to the creation of IRAs. Moreover, all the principles of NPM were vitalized within the organization, management and functioning of IRAs. Through bearing its main characteristics, IRAs also contributed to the development and spread of NPM reforms in different public administration systems. The revolutionary entry of IRAs into many legal and administrative systems in different countries accelerated the transformation of those countries according to NPM principles.

There is a close relationship between the requirements of global capitalism, the principles of NPM and the emergence and development of IRAs. Global capitalism desires opening of all national markets to the direct effect of global capital; regulation of all markets with similar market rules and development of flexible, competitive, transparent, open markets through this way; and finally protecting markets from unpredictable political and economic decisions of national governments. Profit-maximization goal of capital is being sustained at global level through dynamic, flexible, domestic free market domains in countries, so the political, administrative, economic and social systems of those countries must be adapted to the dynamics and conditions of free market economy. NPM tried to transform the basic political and administrative structures and mechanisms appropriate to requirements of global capitalism and its neo-liberal order. It strived to create a flexible, competitive and creative public sector sensitive to changing demands of markets and consumers. IRAs as operative tools of NPM reforms undertook the duty of provision of healthy market spaces for global capital and constitution of apolitical markets regulated within the rationale of neo-liberal economics. NPM implicitly points out that markets are new *Leviathans*; they have to be obeyed and everything should be arranged in line with their demands. It favors the

marketization of the public sector through privatization and contracting-out methods and supports IRAs as the ruthless and unaccountable guards of apolitical, non-majoritarian, uncontrollable markets. This situation raises critical questions about the legitimacy of IRAs, its democracy perception and the public aspect of NPM propositions.

Governance approach has been another important factor that influenced the development, organization and governing model of IRAs. The concept of 'governance' became popular in 1990s and had many separate uses in social, cultural, economic, political and administrative areas. Within this thesis, governance was mostly analyzed as a new model of interaction between state and society that includes many societal actors within the process of policy-making, regulation and governing. By its neo-liberal advocates, governance model was propagated as a participatory governing model and was presented as a salvation prescription that may solve the legitimacy and unaccountability problems of IRAs.

An amazing process of managerial reforms in administration, privatization and deregulation movements, liberalization of markets, and marketization of public sector as much as possible was witnessed in many countries during the 1980s as a result of the attacks and reform proposals of public choice theory, NPM and the dominant neo-liberal climate. All these neo-liberal policies have resulted in high economic and social tensions in many countries. Governance approach with its stresses on an effective state steering the economy, a democratic administration, a new participatory, accountable, transparent, independent and polycentric governing model including all societal actors in all levels of policy-making and administration, emerged to soften extreme neo-liberal reforms. However, governance approach did not aim at replacing the basic neo-liberal reforms, but reproduced and presented them with a new vision to people. Governance approach ensured a critical role in reforming the administrative, political and economic systems of countries under the guidance of NPM reforms and neo-liberal economics, which were still indecisive about application of them in 1990s. For instance, it was supported by international agencies such as the IMF and WB to change the administrative habits of Third World

countries and to create a 'market-friendly state' in those countries. 'Good governance' approach initiated by the WB played a critical role in injection of the NPM reforms into political, economic and administrative systems of countries and the formation of IRAs which were emerged with the aim to be the basic organs of the market-friendly state regulating the market domains effectively and impartially within the market rules. In that context, IRAs enabled different societal actors such as representatives of the private sector, labor, NGOs and other voluntary organizations to participate in the regulation and implementation process as also proposed by the governance model and this constituted a popular justification for the advocates of IRAs to declare them as really democratic and legitimate entities. Naturally, how much this participation is being realized and whether every societal group takes place in the governing mechanism of IRAs in practice are still relevant and unanswered questions.

Other popular justifications for the establishment of IRAs are that their managers are responsible for the outcomes of their acts and actions, their benefit to public is being measured by pre-determined performance criteria which in general comprises only cost-benefit analysis, the organization of IRAs is transparent and open to public, and IRAs are providing a customer-oriented and market-based administration. All these justifications are used to prove that IRAs are accountable, transparent and legitimate public organizations. On the other hand, various effective criticisms and objections were made against them as well, on the grounds that those justifications were inadequate, paradoxical, not-true, non-realizable in practice, and part of a hegemonic discourse. It may be emphasized here that the traditional bureaucracy was under the order and control of elected officials and elected officials coming with direct vote of people were responsible from all the acts and actions of the all political and administrative structures, so governing actor were all legitimate in this system. However, it seems highly difficult for the IRAs, which are neither directly elected by people nor managed by elected officials, but having extensive public power, using public resources and taking decisions on behalf of the people, to prove that they are really accountable and legitimate. For instance, to give satisfactory answers to the questions such as whether IRAs will serve to their customers within the market

domains, the representatives of which are also in governing cadre of IRAs or they will serve to the all citizens; or, whether IRAs will protect public interest in reality or the interests of their customers seem very difficult for the advocates of governance approach to answer.

The emergence and development of IRAs were also analyzed within the case of Turkey in Chapter 7 by taking into consideration the reasons, sources and dynamics behind their existence. The emergence and development of IRAs have been completed in a long, contentious, and multidimensional process that was started after the 1980s. Turkey had a centralized administrative system and tradition, and it applied statist development policies and favored a state-led and rue-bounded economy until the 1980s. As a result, the emergence of such independent agencies which are especially independent from political control was really difficult in Turkey. The Constitution, legal system, political and administrative structures, traditions and principles of Turkey were very far away from managerial reforms, market-based system, neo-liberal economics, liberalization of market and so the IRAs. Turkey gave up statist policies with ‘24th January’ decisions in 1980 and started to follow neo-liberal economic reforms under the monitoring of international agencies such as IMF and WB. Instead of making the necessary managerial and market-oriented reforms within the public sector, which complemented the neo-liberal economic reforms, Turkey tried to implement liberal economic reforms through alternative structures such as councils and undersecretariats under the direct control of the Prime Minister or the state ministries.

Turkish policy-makers did not attempt to reform the deficiencies of its existing administrative and political structures, but created an alternative bureaucracy and political centers, through which, neo-liberal economic reforms could be applied without the direct control of the Parliament and traditional state structures. Turkey also attempted to apply some managerial reforms in the public sector in the 1980s such as privatization, bringing managerial principles in some public organizations and public personnel system, but could not achieve them successfully because of the legal system, political indecisiveness, and fears from the reaction of society. The

exclusion of traditional political and bureaucratic structures from important economic policy areas, and creation of a 'dual bureaucracy' caused problems in the administrative system. The traditional administrative units were left with low budgets, unimportant functions compared to new alternative public organizations. This means that the emergence of problems in traditional units was almost desired in that era. The reason of it was to bash the traditional system and to justify the application of NPM reforms demanded by international debtor agencies is still a relevant question. In 1990s, Turkey went into painful economic, political and administrative crisis situation because of overwhelming domestic and foreign debt ratios, and the increased economic and societal problems such as high inflation, unemployment and interest rates. The corrupt actions within the public sector, the absence or lack of managerial public administration system functioning within the principles of neo-liberalism and the political instabilities were declared as the reasons of economic problems by the advocates of neo-liberal policies. Nevertheless, it is still possible to interpret them as the natural results of the applied neo-liberal economic policies in the 1980s from quite another perspective. It seems that the global capitalist system feeds from the economic crises in domestic markets, because similar economic crises also emerged in other countries newly applying neo-liberal economic policies such as the South Korea, Argentina, Russia, Brazil, and Latin American countries. No matter is the reason, Turkey went into successive economic crises and again tied its hopes to international agencies such as the IMF, WB and EU to solve its economic problems and promised to reform its public sector as these agencies demanded. These agencies, which are the major supporters of neo-liberal policies in this era, played the key role in creation of IRAs in Turkey as well as many other managerial and neo-liberal reforms at the end of 1990s and the 2000s.

IRAs are established by law in Turkey as public institutions having public legal personality, and enjoying administrative and managerial autonomy. They have crucial regulatory, control and supervision, sanction, consultation and view notification, and conflict-resolution rights which invoked critics against them that they are uniting basic separate state powers in their own entity. They have their own budgets, own personnel systems and are trying to apply basic new public

management reforms such as performance-measurement, customer-orientation, competition, enrollment from private sector, and reflection of private management principles to governing model. In this study, eight IRAs regulating the market directly were analyzed, namely, the Capital Market Board (CMB), the Competition Agency (CA), the Banking Regulation and Supervision Agency (BRSA), the Telecommunications Agency (TA), the Energy Market Regulation Agency (EMRA), the Sugar Agency (SA), the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Agency (TTPABMRA), and the Public Procurement Agency (PA). Additionally the Higher Board of Radio and Television (HBRT) was also emphasized due to its importance for being the first real popular IRA of Turkey.

IRAs were established in a very top-down and rapid manner to satisfy the requirements of the IMF, WB and the EU in Turkey, and their proliferation generally followed economic crises and the accelerated drive of Turkey for the EU membership. The loss of trust to politicians, the functional reasons, the liberalization of markets and the neo-liberal market reforms played a lesser role than stipulations of those agencies in the emergence and development of IRAs in Turkey. As a result, IRAs were established suddenly and respectively without making necessary and corresponding arrangements in the legal system, and essential managerial and neo-liberal reforms within the administrative and political systems, structures, and mechanisms. For that reason, many changes had to be made within the laws of IRAs, sometimes to make them more independent and compliant with foreign models, and sometimes to solve problems about their place, authorities, organization and management principles which constituted contrasts with the existent legal rules, structures and principles of Turkish administrative system. There were also other revisions like taking some excessive administrative privileges from them with political concerns, or making them more dependent on the government. Today, there are still many unresolved or debatable problems about the place, authorities, functions, organizational characteristics, legitimacy, accountability, independence of IRAs. There is even no consistency between the IRAs regulating different sector in Turkey. For instance, BRSA is organized more independent than the SA. When one takes into consideration that most of the IRAs have been established within the

period of 1999 and 2003 in Turkey, it is possible to describe this era as a period of incoherency, inconsistency, and complexity. IRAs were suddenly located without a systematic analysis into the Turkish administrative system. The structure of each of these agencies was determined separately in accordance with different stipulations and reactions coming from the IMF, WB, EU, the international arena, political rivalries, private voluntary organizations, and the international and domestic capitalist groups, but there are still many problems about IRAs in Turkey and they will continue to constitute a major issue of debate both in academic, political, economic and social agendas in Turkey.

Consequently, the examinations, observations and deductions made in the thesis suggest that the historically specific and peculiar emergence of IRAs in the 1980s and the 1990s cannot be understood as severed from the globally shaped economic and political changes. The way in which the existence of IRAs is legitimized (with regards to the shortcomings and other problems stemming from the already existing political and administrative systems) can in no way be shown as the underlying reason behind the emergence of these agencies. It could be equally valid to make objections to the existing administrative systems, but the study is more interested in finding out the close relationship between the emergence of IRAs than in diagnosing the obvious problems related to the bureaucracy and in justifying IRAs as the only way to cope with these problems.

It is concluded that IRAs are specific agents of neo-liberalism and serve as the new economic and administrative instruments of capitalism within the era of globalization. Their major functions are regulation of markets in accordance with the tenets of neo-liberal economics and the demands of global capitalism, encouraging more privatization and marketization in public services and contributing to transformation of political, economic and administrative systems under the rule of neo-liberal market values. Therefore, the emergence of IRAs cannot be evaluated as a simple administrative reform, but as a comprehensive transformation project having crucial political, administrative, economic, social and even the cultural repercussions. IRAs are here to transform the public sector under the guidance of

assumptions and prescriptions of public choice theory, new public management and governance approach. Countries welcoming IRAs should be ready to a total transformation process in their political, economic, administrative and social systems.

In the case of Turkey, IRAs were established not by a systematic and conscious approach, but as independent ‘isles’ based on their specific characteristics unfamiliar to the general organization and principles of the administrative system. They provide regulation within some market domains in accordance with the neo-liberal principles, but Turkey seems to support them only in order to fulfill the demands of the international agencies such as the IMF, WB and the EU and to use them functionally for credible commitment to international arena for attracting more foreign capital. In addition, the political and administrative neo-liberal reforms are being newly finding considerable response in government programs in Turkey due to similar external factors effective in establishment of IRAs. As a result, IRAs as well as neo-liberal policies could not complete their institutionalization both within economic and administrative spheres. Following this, whether IRAs would be long-standing or would be reformulated or abolished with a new government decision is still a relevant question in Turkey.

In fact, if the findings of the study are correct, it would be plausible to argue that the emergence and nature of IRAs correspond to a restructuring and redefinition of the relationship between the economic and the political, between state and market, in such a way that neo-liberal policies are institutionalized. Yet, there is need for further research in order to find out to what extent this institutionalization is realized in the context of the developing countries, because, as the Turkish case suggests, it is possible that these institutional reforms be implemented from a top-down and in an ad-hoc manner and that new questions remain open-ended: Will IRAs be an inseparable and legitimate component of the administrative system in countries like Turkey or not? Will they succeed in fulfilling those duties (like the implementation of neo-liberal policies, provision of standardization and competition in markets, establishment of transparent, accountable, efficient and effective public regulation

and management) which are ascribed to them by the neo-liberal governments? Or are they more likely to be replaced by other institutional forms? Will they resolve their interior troubles such as problem of legitimacy, accountability, and organizational and functional inconsistencies? Will they achieve apolitical, impartial and efficient regulation in markets in the long-run or are they more likely to emerge as new political actors? All these questions need to be addressed in order to elaborate the arguments posed in the thesis and to deepen the analysis of IRAs to which the study aimed at making a modest contribution.

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