INSTITUTIONALIZATION OF HUMAN RIGHTS IN TURKEY: EXPERIENCES AND PERCEPTIONS OF WOMEN'S HUMAN RIGHTS ACTIVISTS AND STATE OFFICIALS

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ABSTRACT

INSTITUTIONALIZATION OF HUMAN RIGHTS IN TURKEY: EXPERIENCES AND PERCEPTIONS OF WOMEN'S HUMAN RIGHTS ACTIVISTS AND STATE OFFICIALS

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This thesis contends that human rights advocates' dismissal of attempts by the state in Turkey to institutionalize human rights since the 1990s as insincere or as efforts to delimit and control human rights advocacy is informed by the dominant historical narrative that posits a center-periphery dichotomy as key to explaining Turkey's democratization process, as well as the actual experiences of the state's failure to tolerate autonomous human rights institutions. This dismissal is contested on theoretical and practical grounds. A case is made in support of seeing actors as manifestation of past and present relations acted out in specific contexts and thus eschewing characterizations across space and time that reify social actors. In-depth interviews with representatives of the state and civil society organizations in 17 provinces, on the other hand, reveals that despite state selectivity, women's human rights advocates in the East have managed to turn Provincial and Human Rights Boards into local platforms for deliberation and networking, positively contributing to the protection of women's human rights. The thesis argues that human rights advocates should support the continued operation of the Boards and its contribution to the functioning of the Human Rights Institution of Turkey due to its long experience of bringing a diverse set of actors together in dealing with individual applications at the local level.

Kewords: Institutionalization of Human Rights, Theories of State, Women's Human Rights, State Selectivity

ÖZ

TÜRKİYE'DE İNSAN HAKLARININ KURUMSALLAŞMASI: KADINLARIN İNSAN HAKLARI SAVUNUCULARI VE DEVLET YETKİLİLERİNİN TECRÜBELERİ VE ALGILARI

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Türkiye'de 1990'ların başından bu yana devlet tarafından yürütülen insan haklarının kurumsallaşması denemelerinin insan hakları savunucuları tarafından samimiyetsiz görülmesi veya insan hakları alanını sınırlama ya da denetim altında tutma çabaları olarak reddedilmesinin temelinde, Türkiye'nin demokratikleşme sürecini merkez-çevre ikililiği üzerinden anlamlandıran hakim tarihi anlatım ve devletin bağımsız insan hakları kurumlarına geçmişte gösterdiği tahammülsüzlük yatmaktadır. Bu reddedişe kuramsal ve pratik yönlerden karşı çıkılmalıdır. Kuramsal açıdan zaman ve mekandan bağımsız, sosyal aktörleri "şeyleştiren" yaklaşımların aksine, kurumların belirli bağlam ve koşullarda toplumsal aktörler arasında oluşan geçmiş ve günümüzdeki ilişkilerin yürütüldüğü ilişkilerin tezahürü olduğu savunulmaktadır. 17 ilde devlet ve sivil toplum temsilcileriyle yapılan derinlemesine mülakatlar, devletin işbirliği yapma konusunda seçici davranmasına rağmen Doğu'da kadın hakları savunucularının İl İnsan Hakları Kurullarını müzakere ve ağ kurma platformları şeklinde kullandıklarını, böylece kadınların insan haklarının korunmasına önemli katkı sunabildiklerini göstermiştir. Kurullar, yerelliklerde bireysel başvuruları cevaplandırmak için farklı grup aktörleri biraraya getirme konusunda oldukça geniş bir birikime sahiptir. İnsan hakları savunucuları Kurulların faaliyetlerine devam etmeleri ve yeni kurulan Türkiye İnsan Hakları Kurumuna tecrübeleriyle katkı sunmalarını desteklemelidir.

Anahtar Kelimeler: İnsan Haklarında Kurumsallaşma, Devlet Kuramları, Kadınların İnsan Hakları, Devlet Seçiciliği

To my father, for his belief in me

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LIST OF ABBREVIATIONS

AKP	Justice and Development Party (Adalet ve Kalkınma Partisi)
ANAP	The Motherland Party (Anavatan Partisi)
AP	Justice Party (Adalet Partisi)
BDP	Peace and Democracy Party (Barış ve Demokrasi Partisi)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHP	The Republican People's Party (Cumhuriyet Halk Partisi)
CIVICUS	World Alliance for Citizen Participation
CSO	Civil Society Organization
ÇHD	Modern Lawyers Association (Çağdaş Hukukçular Derneği)
ÇYDD Destekleme	Association in Support of Modern Life (Çağdaş Yaşamı Derneği)
DG	Deputy Governor
DP	Democratic Party (Demokrat Parti)
DPT	State Planning Organization (Devlet Planlama Teşkilatı)
DTP	Democratic Society Party (Demokratik Toplum Partisi)
DV	Draft Version (of Law on the Establishment of a Human Rights Institution of Turkey)
ECOSOC	Economic and Social Council
EU	European Union
HD	Lawyers Association (Hukukçular Derneği)
HCHR	High Committee for Human Rights

HI	Hybrid Institution
HROI	Human Rights Ombudsman Institution
HRFD	Human Rights Foundation of Turkey
HRP	Human Rights Presidency
ICHRP	International Council on Human Rights Policy
ICC	International Coordinating Committee
IGO	Intergovernmental Organization
İHD	Human Rights Association (İnsan Hakları Derneği)
İHOP	Joint Platform on Human Rights (İnsan Hakları Ortak Platformu)
IMF	International Monetary Fund
HRAC	Human Rights Advisory Committee
HRIT	Human Rights Institution of Turkey
HRW	Human Rights Watch
IMF	International Monetary Fund
KSSGM	Directorate General for Women's Status and Problems
Mazlum-Der	Organization of Human Rights and Solidarity for Oppressed People (İnsan Hakları ve Mazlumlar İçin Dayanışma Derneği)
NHRI	National Human Rights Institution
NGO	Non-Governmental Organization
OHCHR	Officie of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the International Convention Against Torture
PHRB	Provincial and District Human Rights Boards

RV	Ratified Version (of Law on the Establishment of a Human Rights Institution of Turkey)
SOGEV	Social Security and Education Foundation (Sosyal Güvenlik ve Eğitim Vakfı)
STEP	Civil Society Index Project (Sivil Toplum Endeksi Projesi)
TAYAD	Solidarity Association for Prisoner Families (Tutuklu Hükümlü Aileleri Dayanışma Derneği)
TİHV	Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı)
TKB	Türkish Women's Union (Türk Kadınlar Birliği)
TÜSEV	Third Sector Foundation of Turkey (Türkiye Üçüncü Sektör Vakfı)
TÜSİAD	Turkish Industrialists and Businessmen's Association (Türk Sanayicileri ve İşadamları Derneği)
UN	United Nations
UNDP	United Nations Development Programme
UNJP	United Nations Joint Programme
VAKAD	Van Women's Association (Van Kadın Derneği)
WB	World Bank

CHAPTER I
INTRODUCTION

1.1. The development of the research question

The preliminary research question guiding the drafting of the thesis started as an inquiry into the historical development of the relationship between what has been conceptualized as the "state" and "civil society" in Turkey, and its consequences for Turkey's democratization process today. An academic research into these questions required, first and foremost, defining the concepts theoretically through an extensive review of state theory literature, and building an ontological and epistemological position with which to proceed. The next step was to contextualize the theoretical debates on the state in international literature by analyzing the way in which the state-civil society relationship was framed in Turkey. This was done by first looking into the dominant historical accounts regarding the background to the emergence of the modern Turkish state and civil society, and the current debates on democratization of Turkey based on these accounts. Following a critical review of these debates in Turkish academic literature based on the theoretical insights gained from state theory, a specific case study was required with which to make sense of how these perspectives on the development of state-civil society relations in Turkey translated into practice. Academic literature on democratization in Turkey pointed to the post-1980 coup era as the period in which an "independent" associational sphere emerged while the European Union (EU) candidacy process increasingly drove state reform towards approximation with the Copenhagen Criteria. In addition, in the post-Cold War era the United Nations (UN) began pushing more successfully for a greater role in the monitoring of human rights and the setting of international human rights standards, as well as the creation of National Human

Rights Institutions (NHRIs) that would work as national hubs to oversee compliance with these standards. Concurrently, the state in Turkey undertook what became a continuous effort to institutionalize human rights since the early 1990s. The research focused on this specific process of the creation of a mid-level institution between the state and civil society that would be accountable for a subject that was traditionally thought to fall under the purview of civil society organizations. Debates throughout this institutionalization process, a detailed study of the different efforts of the state in this regard, and the criticisms generated by human rights advocacy groups were studied.

The research further narrowed its focus by examining the establishment and functioning of what could arguably be termed the most ambitious of these institutionalization efforts by the state, namely the Provincial and District Human Rights Boards (PHRBs). Established in each province and district in Turkey, membership in the PHRBs consisted of various non-state actors under the leadership of the provincial deputy governor or district governor, and functioned to receive, deliberate and respond to individual human rights complaints in their respective cities and towns. The research concentrated on the relationship of state officials with women's civil society organizations within these platforms throughout 17 provinces in Turkey via semi-structured in-depth interviews.

Over the period the interviews were conducted, the draft Law on the Establishment of a Human Rights Institution of Turkey (HRIT) was being debated and criticized by human rights advocacy groups in Turkey. These debates, along with the establishment of the HRIT following the ratification of the HRIT Law in Parliament in June 2012 pulled the thesis into applying the knowledge already gained from the literature review and interviews conducted to make sense of criticisms leveled at the HRIT by human rights advocates, to conduct a comparison of the advantages and disadvantages of PHRBs and the HRIT, and to recommend a way forward in the working of the HRIT by including the advantages evidenced by the PHRBs while eliminating their shortcomings. Moreover, the comparison of a centralized NHRI with a decentralized system of PHRBs allowed the formulation of a critical

approach towards the insistence of UN agencies on a one-size-fits all set of standards displaying a clear bias towards the former system, and the over-reliance of human rights advocates in Turkey on the Paris Principles as the blueprint for an autonomous NHRI.

A more detailed account of the story of the thesis will now be attempted, in which the decisions taken that guided the research as well as the methodology of the thesis will be specified.

1.2. The theory

Literature on the state has mostly revolved around the issue of the extent of its autonomy, whether this term was analyzed through Institutionalist, Marxist, or Feminist lenses. Autonomy, by definition, requires the state to be seen as an acting entity that is defined either through its own pre-given and unique characteristics or the characteristics that it does not possess. Therefore, for most theories the extent of state autonomy is understood in terms of autonomy from the forces of "civil society", generically taken to mean the sections of society not directly responsible for the administration (economic, political and social) of a given society within territorially marked boundaries. This ontological separation between the "state" and "civil society" resulted in conferring a distinct identity to the state, either through its "modus operandi" or by the functions which allegedly necessitated its creation and for which it would be responsible.

Institutionalists, influenced by Weber's account of the state as an institution with a dedicated staff who "successfully upholds the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order" (Weber, 1921/1978, p. 54), attribute a distinct identity to the state as an actor in its own right. For instance, Mann argues the state is an autonomous entity by noting that "the state is merely and essentially an arena, a place, and yet this is the very source of its autonomy", and points to the significance of the centralized territoriality of the state as the most important distinguishing aspect of state power from social groups (Mann, 2003, p. 53). Such a view, however, fails to account for the constitutive

effect relations between social actors and different types of power generated outside the state sphere can have on the form taken by states in different contexts, or "spaces". Rather, institutions are dealt with as if they were calculating agents on their own, and the state is reified as a distinct entity with its own inherent, pre-given properties, interests and space of action.

In opposition to this view, classic Marxist and second-wave Feminist theories of the state understood the state to be necessitated from the requirement to uphold and maintain certain structural inequalities in society in favor of advantaged groups. The form of the state, therefore, resulted from its function. The state for Marxism was therefore an instrument of the bourgeoisie, while for second-wave Feminists the state was a manifestation and upholder of the patriarchal social system. Yet such a functionalist approach also reified the state, instead of contextualizing it within a network of relations. The cart is once again put before the horse, as the role of agency in making and re-making the state is not accounted for. The following quote by Peter Bratsis can be applied to all functionalist approaches:

> Of course, no Marxist state theorist says that the state is an a priori, that its existence is not a product of social relations or practices, that it does not have a cause. Nonetheless, state theory acts 'as if' this were the case. Precisely because state theory does not explain the existence of the state, because state theory takes the state as its point of departure and fails to demystify its existence through explanation all state theory proceeds 'as if' the state were indeed a universal a priori predicate to our social existence rather than a product of our social existence. This 'as if' act by state theory is a fetishizing act (and thus reifies the state) because it endows the state with ontological qualities not its own and abstracts its existence from the realm of social relations (Bratsis, 2002, p. 249).

The most important consequence of reifying the state in this manner is that it makes it difficult to account for contingency, that is, the unexpected results and unintended consequences in history that can change social and institutional forms and relations. While institutionalism attributes to the state an identity, the main function of the state becomes its own preservation and expansion. On the other hand, functionalists fail to see how the allotted functions may not be able to be fulfilled, along with the unexpected results and unintended consequences generated from such failure. A

related consequence of the ontological separation of the state from civil society and its subsequent reification is the over-emphasis placed on the determining role of structures on political action and the overlooking of the role of agency in the creation of these institutions. The mutually constitutive roles of "structure" and "agency" is a necessary ontological position to explain contingent outcomes deriving from the actions of individuals or groups acting within institutional constraints or incentives.

Therefore, in opposition to the ontological separation of the state and civil society, the thesis proposes a relational approach, whereby actors are seen to manifest characteristics in relation to their environments, that is, in relation to the facilitating or limiting structural circumstances as well as other actors. The "state" or "civil society", therefore, is not seen as an intrinsic entity, but "the material condensation", as Poulantzas puts it (1978, p. 129), of the relationship among different classes and identities in society. This "relationship" is actually the past and ongoing conflicts, collaborations and compromises reached between and within these groups, or in fact individuals in groups, as the case may be. This view brings with it the possibility to explore complexity in society; seeing the "state" or "civil society" as a field of dynamic relationships, for instance, allows for an appreciation of the diverse set of interests and strategic alliances within these fields, which is advantageous both theoretically and practically. Such a view is theoretically advantageous in that it strives to understand the "state" and "civil society" not through pre-determined "functions", but through their present "forms", that is, their current institutional manifestations, whether real or perceived (socially constructed), which can show specificities such as different preferences, strengths and weaknesses in different structural settings. A relational view is practically advantageous as understanding the state as a dynamic and unfolding institutional form would allow a societal actor such as a civil society organization (CSO) to be more willing to engage with and within the state apparatuses.

Surprisingly, the literature review on state theory revealed a move towards a more relational approach in Marxist, Feminist and new institutionalist theories of state,

especially as a result of taking on board the insights provided by poststructuralism regarding contingency and the role of agency in constructing realities without foregoing their ontologically foundationalist views. Therefore, while the role of ideas and the agents who hold these ideas were accepted as having constitutive and potentially transforming effects on the institutions that constituted the structural "reality", all three theories of the state refused to do away with the state as a concrete object. After all, Marxist and Feminist emancipatory ideals are based on there being a knowable reality and the pursuit of an ideal of equality, while the analyses of new institutionalists are invariably based on the state as a concrete, thinking and calculating actor. These theories of the state converged, therefore, around critical-realism, which upholds that structures exist independently of our interpretation of them but that these structures do not strictly determine political action. Rather, they form a constraining or facilitating environment in which agents act. Epistemologically, critical realism argues that both "reality" and the discursive construction of that reality are knowable. Thus, critical-realism does not prioritize structure over agency, or the concrete over the ideational, or vice-versa. Yet neither does it accept the poststructuralist denial of an existence of the state, or any of the dichotomies mentioned. Basically what this has translated into is the mutual need felt by the mentioned theories of state to contextualize the state in the environment of relations it has emerged from, and conduct analyses accordingly.

1.3. Debates regarding the state-civil society relationship in Turkey

Following the theoretical literature review, a separate literature review was conducted to map out existing analyses of the state - civil society relationship in Turkey. A dichotomous paradigm was revealed behind a majority of the scholarly work published on the issue, based on the premise of an ontological separation of the state from civil society, analogous to the center-periphery duality expressed in the writings of Mardin (1969; 1975) and Heper (1985). The emphasis placed on the emergence of a unique "strong state tradition" in the Ottoman Empire and its inheritance by the Republic of Turkey is the main culprit, reifying the "state" and

"civil society" as homogenous entities locked in a zero-sum power struggle throughout history, and depicting the struggle as having created an unbridgeable divide between the two. Theories of democratization in Turkey continuously point to the efforts of the state - generally seen to be represented by a state elite - to preserve themselves in the face of what they regarded, from the detached privileged positions they had created for themselves, as a continuously encroaching internal and external threat. All attempts of reform by these state elite throughout history are therefore seen as attempts to pacify the periphery and strengthen the center.

Such a narrative, combined with the reputation gained in democratization literature by civil society as a democratizing actor in the neoliberal era, has led democratization theorists to periodize Turkey's history of democratization through the yardstick of how autonomous civil society has been vis-à-vis the state (and in much fewer analyses, the market). The standard by which these periods are measured against is an ideal-type civil society capable of birthing an autonomous bourgeoisie which could be the mediating actor between the state and society. The narrative consistently emphasizes, however, that such a civil society has been denied in the Turkish case through coercion, manipulation, assimilation and outright military intervention by the Turkish state. It is the 1980 coup d'etat, however, which is seen as the real turning point, as what had been ideologically enfranchised CSOs are increasingly said to have turned to more universal and post-political discourses. The opening up of the Turkish economy to the world market and the EU accession process involving conditionalities in the field of human rights is said to have been critical in bringing about an increasingly diversified and empowered set of CSOs into the Turkish political scene. Chief among the advocacy topics championed by these CSOs was that of human rights, the adoption of which enabled domestic CSOs to connect with and legitimize their advocacy efforts through reference to a rapidly growing set of human rights standards codified in international law.

1.4. The institutionalization of human rights in the world and in Turkey

The review of the literature regarding the development of the state-civil society relationship in Turkey, therefore, showed that this literature was used as the basis to explain the democratization process of Turkey. Scholarly work on the democratization process in Turkey was based on the ontological separation of the state from civil society, the reification of both concepts, an institutionalist essentialism as to the positing of a thinking and calculating state, a liberal-prescriptive and therefore functionalist view of civil society, and a paradoxically ahistorical and negative view regarding the possibility of change in the zero-sum relationship between the state and civil society. Accordingly, research for the thesis turned to testing these assumptions by focusing on a specific area of state reform, namely the institutionalization of human rights and the relationship between the "state" and "civil society" in this process. What is meant by the term "institutionalization of human rights" in the thesis is the setting up of specialized formal structures by the state as authorities on deciding on issues related to human rights. These issues potentially range from deciding which social phenomena fall under the rubric of human rights, as well as decisions regarding how to prevent human rights violations and how to compensate victims of human rights abuses.

It was hoped that this would then lead to a clarification of the dynamics of the state-civil society relationship in Turkey. Did the process of the institutionalization of human rights by the state substantiate the arguments made by the dominant historical narrative that it (the state) was a calculating actor attempting to expand its capacity and sphere of power at the expense of civil society? Was the state, as human rights advocates in Turkey consistently stressed, trying to encroach upon and manipulate an area that had been claimed by civil society organizations to stop them from revealing the abuses of state power? Positive answers to these questions would go a long way in validating the historical narrative of a top-down democratization process led by the state according to state interests. However, a relational approach based on a critical-realist epistemology would require an inquiry into whether or not

how the state is perceived, or constructed in perception (both by state officials and human rights advocates) affected the interpretation of the actions of the state as reinforcing a zero-sum relationship. Could a relational view of the state-civil society relationship lead us to an alternative understanding of the institutionalization of human rights, specifically with regard to the appearance of unexpected results and unintended consequences that would ultimately undermine the view that the relationship proceeds or bound to proceed in a zero-sum logic?

The choice to concentrate on national human rights institutions (NHRIs) as platforms from which the specific dynamics of this relationship can be gleamed is largely due to the "unique position" held by these institutions in between what is perceived as the "state" and "civil society":

> One of the most noteworthy features of NHRIs is the unique position they occupy between government, on the one hand, and civil society and nongovernmental organizations (NGOs), on the other hand. It is this conceptual space which gives NHRIs a potentially distinctive role in society. However, this same idiosyncrasy creates difficulties for NHRIs. NHRIs have to grapple with the uncomfortable dilemma of how to be independent from both government and NGOs, while at the same time establishing working relationships with both actors (Smith, 2006, p. 905).

Following the dissolution of the Soviet Union and the end of the Cold War the Paris Principles were drafted as non-binding guidelines for the promotion of National Human Rights Institutions, and increasingly strengthened through the efforts of UN agencies and other intergovernmental organizations. The literature regarding NHRIs (including academic literature as well as all UN material regarding the matter), has mostly treated the "state", as well as "CSOs" and "civil society" (the latter two are generally used interchangeably) as actors that can be placed in certain roles, most notably in opposition to one another. Research looked into the process through which global governance institutions and related UN agencies promoted this set of standards and increased their roles as adjudicators in deciding which countries most closely approximated them. The thesis criticizes this process as reinforcing the perceived separation of the state from civil society and the reification of these categorizations. In addition, it is argued that while the Paris Principles were

necessarily drafted as non-binding general guidelines to register the consent of differentiated political regimes, UN agencies increasingly interpreted them narrowly to ensure their implementation in a manner prescribed by the exigencies and capacities of liberal-democratic political regimes. The thesis makes use of critical approaches by scholars in favor of the institutionalization of human rights who argue in support of the flexibility of the original Paris Principles which enable it to be a guideline for establishing NHRIs that are suitable to the political and administrative context in which they are founded, making them more effective. Furthermore, empirical research in this area (Risse and Sikkink, 1999) shows that once created, institutions acquire a life of their own to potentially internalize international human rights standards. Shaming and blaming states to adopt narrowly interpreted standards prevents the initiation of this process from the start.

Nevertheless, the strong backing of the United Nations towards the NHRI project ensured the surprisingly quick spread of the "National Human Rights Institution" phenomenon around the world. Spurred on by the EU accession process as well, an integral part of state reform in Turkey over the past two decades has been the unprecedented drive to institutionalize human rights, which has culminated in the creation of a "National Human Rights Institution" in Turkey in June 2012. The choice of looking into the process of the institutionalization of human rights was made all the more salient due to the possibility that the debate around these issues could shed light on the well-chronicled historical distrust between state and civil society actors. Coupled with the dominant narrative in academic literature introduced to CSOs in Turkey in the 1990s through the CSO Symposiums as well as various research projects conducted on the issue in collaboration with CSOs, the discourse of intergovernmental organizations strengthened the liberal-prescriptive definition of civil society as a tool in the arsenal of human rights advocates in Turkey. Having adopted the dichotomy narrative, serious criticisms were launched against the state’s attempts at institutionalizing human rights by human rights advocates.

These criticisms can be summarized under four headings: that no national institution in Turkey has conformed to the Paris Principles; that the state's efforts to institutionalize human rights has always been about appeasing the international community and especially the European Union; that the state merely wants to manipulate and control human rights advocacy; and finally, that it makes no sense to file complaints regarding human rights violations to the very institution responsible for these violations. Such criticisms have been vindicated in part by the specific ways in which the Turkish state attempted to institutionalize human rights. Institutions created were almost always comprised of officials chosen by the state, and the de facto dissolution of the Human Rights Advisory Committee (HRAC) following a report on minority rights drafted by two of its academic members showed how, in the rare instance in which the institutions spoke out of line, they would be swiftly dismantled, and the members prosecuted. In the face of such scandals, human rights advocacy groups increasingly relied on the Paris Principles laying down criteria for the establishment of national human rights institutions as the objective standards against which existing and future efforts at the institutionalization of human rights must be measured.

Another disappointing effort in the eyes of human rights advocates were the establishment and functioning of the PHRBs. The most ambitious effort at institutionalizing human rights to date, PHRBs were established in 81 provinces and 891 districts throughout the country. Largely unheralded, PHRBs were created in 2000 to be, in effect, local platforms in which the state (in the form of the Governorships or District Governorships as represented through the Deputy Governor or District Governor) and various non-state actors (including civil society organizations, occupational chambers, the bar, etc.) would come together on a monthly basis to deliberate on and respond to human rights violations claims by individuals. Although on the surface PHRBs stood as the most concrete manifestations of the "good-governance" discourse especially due to their local and participatory character which made them strategically placed to clearly understand the specific human rights issues of their specific regions/provinces, they have been widely criticized by human rights advocates in Turkey. These criticisms included

the failure of the PHRBs to adhere to the Paris Principles, especially regarding standards including independence guaranteed by a constitutional or legislative framework, autonomy from government, criteria with regard to composition, and sufficient resources to effectively carry out the job. Such criticism was indeed justified by the fact that most of the members in PHRBs including at least three CSOs were chosen by deputy governors who presided over the Boards.

1.5. The methodology of the research

Following the literature review on state theory, as well as the review of the dominant narrative regarding state-civil society relationship in Turkey, research proceeded with the hypothesis that state-civil society cooperation could only be understood through a relational approach which places the relationship into context and can account for the simultaneously path-determined, complex, contingent and continuously contested and reproduced nature of the strategic selectivity of the state. The research needed to test the argument that the nature and quality of the relationship between agents of civil society and representatives of the state is dependent (contingent) on the specific characteristics of the environment, actors and historical legacies involved, and is continuously reproduced and reconstructed. Furthermore, a relational approach noted that the institutional constraints placed on certain strategies and its enabling effects on others, can best be seen through an appreciation of the contingencies and complexities involved in a specific spatio-temporal setting. Moreover, a relational approach had also to be tested on account of whether strategies truly were complex phenomena constructed on the basis of overlapping determinations of identities (gender, class, race, ethnicity, etc.) and ideologies, and whether state selectivity in different contexts did in fact account for a structural bias in favor of certain strategies.

Research into the experiences of state-civil society cooperation within the PHRBs presented an opportunity to analyze the way in which state and civil society actors cooperated under a unique decentralized model of institutionalizing human rights. In addition, an analysis of PHRBs could aid in understanding the ways in which

state officials and representatives of civil society organizations (CSOs) perceived one another, and how these perceptions translated into the composition and effectiveness of the Boards. The fact that PHRBs were locally organized also presented the opportunity to compare whether or how perceptions of the "state" or "civil society" by the respective representatives of these actors differed across different regions in Turkey, and to what effect. The research could thus also seek to understand whether or not and how the relationship between the state and civil society differed across regions.

The experience with the HRAC and the criticisms leveled at the PHRBs guided the research towards specifically focusing on the criteria used by state officials in selecting which CSOs to cooperate with. As Governors, or Deputy Governors and District Governors in the name of the Governor concerned, were mandated with choosing the CSOs for membership to the Boards, conducting the research within PHRBs presented itself as the logical choice. The research proceeded with the assumption that these criteria would be a crucial element to revealing the perceptions state officials held regarding CSOs in general and in their respective areas in particular, how the criteria used in different regions of Turkey by different state officials showed similarities or differences, and the reasons behind these differences/similarities. In other words, revealing the criteria used by state officials in different provinces throughout Turkey in selecting which CSOs to work with would potentially contextualize the way in which the "state" perceives cooperation with different CSOs, and explain the facilitating or constraining role of institutions towards different social actors in different contexts. For this purpose, field research conducted for the thesis concentrated on revealing the criteria used and the justifications for the criteria presented by state officials for the membership of CSOs to the Boards.

Whether or not selectivity was employed by the state towards different groups in different contexts, however, could not be uncovered without taking into account the views and perceptions of civil society organizations. The answers and justifications of the Deputy Governors in charge of the PHRBs needed to be compared with and

tested against the answers and viewpoints of a particular advocacy group in society that was organized throughout the country, but which would have a stake in conducting its activities locally or regionally, taking into consideration context-specific issues and demands.

Firstly, it was important that the civil society organizations interviewed were advocacy groups, rather than associational groups based around a charity organization, associations aiming to further the cause of a certain occupation, or solidarity associations based on membership from a certain territorial location. The main factor for choosing advocacy groups was that they necessarily engage the state as a significant part of their lobbying efforts for civil, political, economic or cultural rights. Charity groups, on the other hand, while also lobbying the state, mostly direct their efforts towards social actors to raise money or alms for a particular group in society, rather than pursue a political agenda. Similarly, associational groups based on occupational membership or membership based on place of origin necessarily limit their political agenda to the occupation or place of origin concerned, and mostly engage in solidarity work. While there may be instances in which charity groups or solidarity associations actually pursue a political agenda, this is different from advocacy groups pursuing charity or solidarity for a certain group. Advocacy groups need to engage the state consistently. Therefore, it was reasoned that they would be experienced and opinionated regarding cooperation with the state, and that state officials would in turn know about their advocacy efforts and have established opinions that would guide their selectivity.

Secondly, the social group in question would have to be advocating a universalistic aim, but be organized nationally, regionally and locally. This was especially important if experiences regarding state selectivity were to be compared according to location. Through a similar rationale, it would be preferable if the primary issue advocated actually showed differences according to regions or localities as this would increase the permutation of selectivity employed by state actors. Thirdly, in a related manner, the advocates of the issue concerned should preferably not be politically contentious to the extent that the selectivity is justified in general terms

of distrust throughout the country. State officials would therefore need to contextualize their selectivity without resorting to generic justifications based on prejudice. The reasoning was that if state selectivity existed, the group against which selectivity is employed should be able to show the various dimensions and depth of this selectivity. Last but not least, the advocacy group in question needed to actively seek out cooperation with the state and not be prejudiced against such cooperation.

Taking all of the above points into consideration, the candidates that the research could focus on was narrowed down to human rights advocacy groups and women's human rights advocacy groups. Both have an important stake in the way in which human rights is institutionalized in Turkey, with vast experiences of cooperation and contestation with the state. As movements, both have organized extensively throughout the country in their historical development process, branching out to numerous organizations placing emphasis on violations of a certain kind or a certain group, a topic that will be dealt with in Chapter 3. The biggest difference between the two, however, was the extent of information regarding state selectivity they could shed light on. Several findings in this regard enabled the research to make an informed selection in favor of selecting advocates of women's human rights rather than CSOs which dealt with human rights in general.

First and foremost, the negative media attitude and state oppression towards the main human rights advocacy groups have been well-documented. Plagemann (2001, p. 367), for instance, notes that all human rights associations in Turkey state that they have been misrepresented by the media by being associated with particular political forces and that the media has been an important force in pigeonholing them by solely reporting on activities of these associations which fit into their respective characterizations. Hence, news regarding the activities of the Human Rights Association (İnsan Hakları Derneği - İHD) directed towards the human rights violations experienced by the Kurdish population, and the activities of Mazlum-Der (İnsan Hakları ve Mazlumlarla Dayanışma Derneği) regarding advocacy in favor of the right of women to wear veils would figure prominently in media reports, while

other activities regarding social and economic rights would not gain the same visibility. This has led to an association of these issues with the organizations concerned in the eyes of the public. Furthermore, İHD has been regularly repressed by the state, including countless searches and arrests mostly resulting in torture, hundreds of cases brought against its administrators, the banning of numerous activities, the closing of its branch offices and the assassination of many of its members and leading figures (Plagemann, 2001, p. 372). Such a history of state oppression and media misrepresentation could, in all probability, have resulted in the development of a prejudice in the opinions of state officials, and a rightful distrust towards cooperation with the state in the eyes of human rights advocacy CSOs. However, selectivity employed by the state for or against cooperation with certain women's human rights organizations would need to be qualified with explanations that required a connection to be drawn between these organizations and what may be termed their "ulterior political agendas", a task that was thought would be more difficult than qualifying selectivity against already stigmatized advocacy CSOs working in general human rights advocacy throughout the country. Such selectivity would also be in line with third wave feminist assertions that women are readily subjected to multiple discriminations, including besides their sex, their ethnicity, social class, religious belief, etc.

Another very important indicator that tilted the choice in favor of women's human rights advocacy CSOs rather than human rights advocacy CSOs was the willingness of many women's CSOs to actively cooperate with the state, especially in local settings, and specifically with Provincial Human Rights Boards. In a 2009 study entitled "Women's Human Rights and Gender Equality" conducted under the aegis of the project "Support to human rights education of the inspectors at the Ministry of Interior in Turkey" (a joint project by the United Nations Development Programme, Danish Institute for Human Rights and the Ministry of Interior of Turkey), the following was noted regarding the attitude of women's human rights advocates to cooperation with the state through the PHRBs:

> All NGOs interviewed within the scope of the project stated the importance of cooperation with the state. The NGOs that were not admitted to the provincial human rights boards have therefore indicated that they will never stop applying for membership of the boards; displaying the awareness that their activities will remain limited unless cooperation with the state is realized. Another important point underlined by NGOs is the belief that jointly conducted activities would have facilitating effects on both sides of the collaboration (Acar & Arıner, 2009, pp. 94-95).

In light of these facts, a research was conducted in October 2009 into the constituent lists of the PHRBs in every province of Turkey through the web pages of 81 Governorships in order to identify which women's CSOs were present in their local Boards (please see Annex I). The research revealed that 38 of the provinces did not have any information on membership to PHRBs on their Governorship internet sites, while only 41 of the provinces published a constituent list for their respective PHRBs. In 21 of these 41 provinces a women's CSO was seen to be present. This meant that women's CSOs were active in more than half of the PHRBs for which there was information regarding membership. Moreover, the research showed that there was at least one women's CSO in each region of Turkey, a fact that would be useful for comparing the experiences of women's CSOs in cooperating with the state across the country.

1.5.1. The selection of the provinces for the research

In line with the purpose of the thesis to uncover the nature of state-civil society cooperation in Turkey by testing the zero-sum approach against a relational approach via an analysis of the presence and justifications of state selectivity and the responses of CSOs to this selectivity, the study set out to conduct semi-structured in-depth interviews in 17 provinces with Deputy Governors heading the Boards and women's CSOs who were, or aspired to be, members of the Boards.

The research aimed to uncover the differing reasons (local, regional) underlying the selectivity from the perceptions of those who either employ selectivity or are affected by it. By doing so, the thesis would be able to explain variations in cooperation between women's CSOs and the state in Turkey by comparing the

experiences and perceptions of both women's CSOs and state officials in Provincial Human Rights Boards operating in different contextual circumstances in Turkey.

In light of these hypotheses, the following provinces were selected for the research:

Table 1: Provinces selected for interviews

Geographical Region	Name of Province
Eastern Anatolia	Kars; Iğdır; Ardahan; Erzurum; Muş; Van; Malatya
South Eastern Anatolia	Diyarbakır
Marmara	İstanbul; Çanakkale
Mediterranean	Antalya; Mersin
Aegean	İzmir; Denizli
Inner Anatolia	Ankara; Eskişehir
Black Sea	Trabzon

Several factors affected the choice of provinces in which interviews would be conducted. Among the most important criteria was the possibility of uncovering state selectivity in a clear manner. Therefore, it was assumed that regions where advocacy for women's human rights were determined intersectionally would give the clearest picture with regard to state selectivity. This hypothesis was influenced by results from the above-mentioned research project (Acar & Arıner, 2009), which had already uncovered the willingness of active Kurdish women's rights advocates such as the Van Women's Association (Van Kadın Derneği – VAKAD) and KAMER to work with the state, as well as allegations that obstacles were placed in front of their membership to PHRBs by state officials, with slight intimations that this could have occurred due to the articulated identities of women's human rights advocates in the region as feminists with Kurdish ethnicity. This is why the research focused mostly (eight out of seventeen provinces) on provinces in the East and South East Anatolia regions predominantly populated by the Kurdish community.

In order to compare the results regarding cooperation between the state and women's human rights advocacy CSOs in Kurdish regions of the country with

experiences in the rest of the country, provinces that could give the best possible control samples were chosen.

Based on the findings of a thorough study on the make-up of civil society in Turkey conducted by a joint initiative of the Third Sector Foundation of Turkey (Türkiye Üçüncü Sektör Vakfı – TÜSEV) and the World Alliance for Citizen Participation (CIVICUS) in 2006 entitled "Civil Society in Turkey: A Process of Change – International Civil Society Index Project; Country Report Turkey" (the STEP Report), the three big cities of Istanbul, Ankara and Izmir were chosen for interviews. The STEP report states that a greater percentage of CSOs are located in the three big cities of Istanbul, Ankara and Izmir, with a smaller proportion of CSOs to the public population towards the Eastern/South-Eastern parts of the country (STEP Report, 2006, p. 52). Furthermore, STEP points out that financially strong organizations maintain more developed relations with international CSOs (STEP Report, 2006, p. 56), as well as receive a greater share of donations due to their capacity to employ the necessary capacity for fund raising, especially due to the fact that most of these CSOs are created by powerful and eminent personalities from the private and public sectors as well as the academia (STEP Report, 2006, p. 58). Thus, the reasoning behind the choice of the three big cities of Turkey was that the experiences of advocacy for women's human rights and instances of cooperation with the state could be more developed, variegated and frequent. Comparisons with the experiences of state-civil society cooperation in the East and South East regions of Turkey would therefore be informative, especially in terms of the attitudes and perceptions of state officials and CSO representatives regarding this cooperation.

The remaining six provinces, namely Antalya, Mersin, Denizli, Trabzon, Eskişehir and Çanakkale were chosen as representatives of different regions of Turkey for comparative purposes. As criteria for choosing these provinces, it must be noted here that the preliminary internet research (Appendix A) looked at the availability of activity reports, the dates in which available reports were drafted, the availability of a list of members to the Boards, the presence of women's CSOs as members, and

the choice of provinces as pilot provinces in significant projects related to the question at hand.

It was assumed at the outset that the availability of activity reports would be useful to compare the number of complaints received regarding allegations of violations of women's human rights, and the number of cases concluded. It was presumed that the results would then be used to objectively assess and compare the success of women's CSOs in the Boards, and test these findings against the testimonials of the DGs and representatives of women's CSOs interviewed. This proved to be unrealistic due to various reasons. Firstly, the information published on the websites of the Boards did not follow a specific form. While certain websites contained only statistics on the types of complaints regarding human rights violations, others contained very short summaries of the decisions, while still others provided detailed accounts of the decisions of the Boards. The reports were also irregularly kept, as even those provinces such as Çanakkale which published decisions of the Board did so irregularly, skipping numerous months of activity. Although regular activity reports were requested prior to and during visits of governorships, full reports of only on province, namely Trabzon, was acquired. Acquiring activity reports from the Eastern regions was especially problematic, as Kars and Mardin were the only provinces which kept reports. During the time of the internet research (October 2009), these reports could not be accessed in their entirety from the websites, and the reports could not be acquired during the visit to Kars. Failing to acquire a substantial number of reports from the Eastern region prevented the study from obtaining sufficient data to make reasoned comparisons between different regions of Turkey regarding the operation of the Boards.

The preliminary internet research did, however, reveal the provinces in which the Boards contained women's CSOs as members, as well as the provinces that were chosen as pilot provinces for certain significant projects regarding women's human rights, namely the United Nations Joint Programme (UNJP) "To Protect and Promote the Human Rights of Women and Girls" and the "First Step" project

initiated by the Flying Broom Association.[1] It was assumed that participation in these projects could have contributed to creating a favorable environment for cooperation between local state officials and local women's CSOs. The Eastern provinces of Iğdır, Erzurum and Muş noted the participation of women's CSOs in their respective Boards. Kars and Van were chosen as a result of their participation in the UNJP as pilot cities, while Malatya was chosen due to the city's participation in the First Step Project (Erzurum also participated in the First Step Project). Among the PHRBs in which CSOs participated as members throughout the rest of the country, Antalya and Mersin were chosen from the Mediterranean region, while Denizli was chosen from the Aegean region. All three had participated in the First Step Project. Trabzon was chosen from the Black Sea region as it was one of the five pilot cities under the UNJP. Çanakkale was chosen to represent the Marmara region alongside Istanbul due to the fact that two women's CSOs were seen to be participating in the PHRB, namely the Çanakkale Branch of the Turkish Women's Union (Türk Kadınlar Birliği - TKB) and the Çanakkale Association of Support to Women's Handicraft (Çanakkale Kadın El Emeği Değerlendirme Derneği).

The biggest difficulty encountered during the setting up of interviews was the availability of Deputy Governors. Although a letter was sent out to the

[1] The United Nations Joint Programme "To Protect and Promote the Human Rights of Women and Girls" ran from March 2006 to December 2009 with the mission to "address persistent gender inequalities by improving the national policy environment, building local government and NGO capacity, designing service models for women and girls and raising awareness about women and girls' rights in the six pilot cities". The national partners for the project included the Ministry of Interior, KA-DER, as well as "local government and NGOs" (UNDP, n.d.).
The First Step: Project to Establish and Develop Dialogue Between Public Institutions/Organizations and Women's Civil Society Organizations": In response to the necessity felt to strengthen state-civil society dialogue, the "First Step" project was initiated in 2006 in the provinces of Ankara, Antalya, Denizli, Erzurum, Gaziantep, Kocaeli, Trabzon and Samsun, with the participation of the Governorship, Mayoralty, Provincial Human Rights board, Provincial Directorate of Social Services, the Police Department and the Local Media. The aims of the project are stated as being: progress in the fields of participatory democracy and women's human rights through the strengthening of dialogue and cooperation between women's civil society organizations and the public institutions; creation of sensitivity to the issues of women's human rights and gender equality among the public; and the elevation of the status of women through their participation in state mechanisms. In 2008, the project was expanded to the cities of Kars, Izmir, Malatya and Mersin. The project has specifically focused on obtaining the views of women's NGOs in relation to participation with public institutions, including PHRBs. During the time of the research, however, the Flying Broom Association was not able to present the findings of their study (Uçan Süpürge, n.d.).

Governorships of 17 provinces regarding the planned interviews through the Prime Ministry Human Rights Presidency, due to their busy schedules, Deputy Governors could not confirm their availability for interviews until very close to the interview date. In addition, the research was financed by the Middle East Technical University Scientific Research Project (Grant number: *BAP-07-03-2010-00-04*) and confirmed visits needed to be clustered together to produce the optimum travelling plans. Therefore, DGs of neighboring provinces needed to be available at approximately the same time periods for interviews to be conducted. If such availability could not be secured in one province, this province was discarded from the research in favor of conducting interviews in the majority of the chosen provinces. For example, an interview with the DG of Mardin could not be secured due to the fact that the DG was on leave during the time the Eastern provinces were visited. Another important factor which came into play was the use of personal contacts in securing DGs to interview. The DGs of Eskişehir and Ardahan were interviewed as a result of opportunities that came up through personal contacts.

Priority given to the availability of DGs in formulating the travel plan meant that the women's CSO representatives were contacted following the securing of interviews with DGs. In-depth interviews with women's groups were conducted in eleven provinces, eight of which had women's CSOs as members of the Boards.[2] It was believed that the research would benefit from the experiences of women's human rights advocacy CSOs that desired to, but could not become members of the Boards, in order to understand both the reasons for the rejection of their membership applications, as well as the reasons behind the insistence of these CSOs for membership to their local Boards.[3] The Istanbul PHRB did not have a women's

[2] Representatives of the Turkish Women's Union in Iğdır, Erzurum, Çanakkale, representatives of KAMER in Muş and Diyarbakır, representative of the Association for the Protection of Women's Rights in İzmir, representative of the Association for the Protection of Modern Life in Mersin, representative of the Turkish Mothers Association of Trabzon in Trabzon, and the Çanakkale Association of Support to Women's Handicraft also in Çanakkale.

[3] These provinces included Van, where both VAKAD and KAMER were trying unsuccessfully to become members of the Van PHRB, and Kars, where the Entrepreneur Women's Assocation was also refused membership.

CSO present among its members, leading the study to seek out the opinion of an active women's CSO operating from Istanbul, namely the Purple Roof Association, regarding cooperation with the state through the Boards. Similarly, the Ankara PHRB also did not have a women's CSO among its members. Here the research secured an interview with an academician who had been a member of the Board.

All in all, research for the thesis entailed semi-structured in-depth interviews in 17 provinces with 16 Deputy Governors presiding over the Provincial Human Rights Boards as well as 2 chief clerks (civil servants), and 1 district governor substituting for their respective DGs, in addition to 15 representatives women's CSOs who were, or aspired to be members of the PHRB, along with one academician and one political party representative who were or had been members of the PHRBs in their provinces. The DG of the Izmir PHRB was abroad during the visit to the Mediterranean, Aegean and Marmara regions, and therefore the chief clerk responsible for the secretariat duties of the Board was interviewed instead. The DG responsible for the of the Ardahan PHRB could also not be reached, and therefore the District Governor substituting for the said DG and the chief clerk responsible for the secretariat duties of the Ardahan PHRB were interviewed instead. Two separate women's CSO representatives were interviewed in Çanakkale and Van, while two representatives from the same organization were interviewed in Muş. Two representatives of VAKAD were interviewed simultaneously in Van. The representative of Mazlum-Der was available for an interview while other interviews were being conducted in the Province, and the opportunity was seized to interview an active human rights organization that is known for its advocacy for the protection of religious rights in a province traditionally known as the stronghold for secular votes. Interestingly, the representative of Mazlum-Der was accompanied by the provincial president of the ruling AKP (Justice and Development Party) branch in İzmir.

The interviews were conducted throughout a period of 3 years as a result of personal and professional reasons. In-depth interviews were chosen as the appropriate qualitative methodological approach due to the necessity to understand

the perceptions of the persons interviewed, and to follow leads and threads by further questioning if necessary to uncover these perceptions. In only two cases (Ankara DG and representative of the Iğdır branch of the Turkish Women's Union) were questions replied to in writing, upon the request of those interviewed.

1.6. Findings from the field

The questions posed towards the DGs (please see Appendix B) aimed to bring out the perceptions of the DGs regarding the efficacy of the Boards in receiving and dealing with allegations of human rights violations, and the recommendations they may propose should they see room for improvement. Interviews also sought to understand the level of autonomy for the Board that could be tolerated by the DGs, as well as the perception of the DGs regarding the qualification and capabilities of members to deal with allegations of human rights lacking the logistical and leadership support given by the state. In addition, the method and criteria by which CSOs are chosen to the Boards were asked, along with what DGs perceived as being important for successful cooperation with civil society actors. On the other hand, questions posed towards representatives of CSOs aimed to reveal the perception towards, reasons behind, and experiences with cooperation with state officials, as well as international organizations and other women's human rights CSOs. Furthermore, the greatest perceived obstacles in front of successful cooperation and recommendations for developing cooperation with the state were asked. Inquiry was also made as regards previous or present experiences with refusal to PHRB membership, and the received or perceived reasons for refusal. Both DGs and CSO representatives were asked about their assessments of endeavors to establish a National Human Rights Institution, and what they believed would be the advantages and disadvantages should such an Institution be created.

Following the literature review of state theory as well as the literature pertaining to state-civil society relationship in Turkey, the hypothesis that guided the proposed research maintained that state selectivity is shaped differently in different contexts. Following a relational approach, it was hypothesized that such selectivity facilitates

access to the public sphere for certain strategies (i.e. advocacy groups) while constraining access for others, thereby affecting the legitimacy, development and effectiveness of these strategies. According to a relational rationale, women's rights advocacy is differentiated, in turn, according to various factors such as the context-specific articulation of the identities of the women represented and the approach of the specific CSO to the issue of women's human rights. Such differentiation places certain women's CSOs advocating particular articulations of gender, class and ethnicity at a disadvantage in state-civil society cooperation than others which may or may not base their advocacy on different articulations. The thesis hypothesized that where women's identities are articulated along identities and ideologies that fall counter to traditional selectivities of the state, women's CSOs claiming to champion the rights of these women would find it more difficult to access the public sphere.

Although the answers received to these questions did in fact corroborate the existence of state selectivity against politically active CSOs in general and Kurdish women's human rights advocacy CSOs in the Eastern provinces in particular, the most interesting findings related to how these selectivities were dealt with by the local CSOs in question, the insistence on cooperating with the state in provinces in which selectivity was most pronounced, and how state-civil society cooperation developed in certain provinces despite strongly held initial prejudices on both sides. Those state officials and women's CSO representatives that held non-prejudiced views regarding the other actor, or who had given cooperation a chance, saw that mentalities and perceptions of one another could be changed, and productive cooperation could result from such change. The findings strikingly show that Kurdish women's CSOs, who face multiple levels of discrimination as a result of the articulation of their identity through their sex and ethnicity, are the most insistent regarding cooperating with the state. This is explained through the belief in their ability to change the mentalities of state officials if given a chance, and the importance of working hand in hand with state officials in order to achieve concrete results. The latter point was also emphasized by DGs, who noted the peculiarity of the Turkish administrative system that gave much power and therefore accorded great prestige to civil administrators in the provinces. Yet it is the informal

networks created, and the mentalities changed which are most clearly emphasized by women's CSOs as the successes of working with the state in their localities. Such informal ties have created an understanding and trust which has more often than not translated into concrete action in support of women's human rights.

1.7. Debates on the national human rights institution in Turkey

In light of the findings from the field regarding the functioning, effectiveness and potential of the PHRBs, and taking into consideration the fact that human rights advocates persistently pointed to the Paris Principles in criticizing these and other institutionalization attempts by the state, the research took a critical look into the purpose and scope of these Principles. Furthermore, an analysis into the debates surrounding the creation of the HRIT was made in order to assay the salience of criticisms against the HRIT by human rights advocates, specifically with regard to whether or not the HRIT Law conformed to the Paris Principles. The question of why an over-reliance on the Paris Principles existed in criticisms against the institutionalization of human rights in Turkey, and what its effects were on the creation of effective human rights institutions, was looked into. Finally, based on the findings from the field and a detailed analysis of the HRIT Law, a model is proposed regarding an optimum configuration for a human rights institution in Turkey.

A cursory look at the literature and experience regarding the Paris Principles shows that strict adherence to these Principles does not guarantee effective NHRIs. The effectiveness of NHRIs are bound to be limited in contexts where they act as non-governmental institutions, without the necessary understanding of the constraints within which government operates and without working to design solutions that could be adopted and implemented in the real world.

The thesis argues that the reliance on the Paris Principles by human rights advocates in criticizing the state's efforts to institutionalize human rights is, in fact, the consequence of an ontologically sectarian view. Instead of viewing state-civil society relations as a zero-sum game in which a gain made by one side

automatically results in an equal loss to the other, human rights advocacy needs to understand the state not as an ahistorical actor pitted against civil society in all aspects, but as a field of struggle. Advocacy should therefore be directed *not only* against the state, but also with it, within it and through it. However, by disengaging themselves with the work of the Provincial and District Human Rights Boards (PHRBs) due to the emphasis placed on the Paris Principles, certain human rights groups have disconnected themselves from an important platform for human rights advocacy, and have failed to present a pragmatic alternative to the creation of the HRIT. What is more, it can be argued that the Government was able to utilize this reliance on the Paris Principles in justifying the creation of the Human Rights Institution of Turkey (HRIT), which in effect affords the Government much more potential to exercise its selectivity with regard to its choice of non-governmental organizations to work with. Yet the Paris Principles is not a sufficient enough basis to denounce the HRIT, as the letter of the Law creating the HRIT cannot plausibly be seen as contradicting the Paris Principles. The result is that human rights advocacy groups seem to be outmaneuvered by the Government due to their choice to rely on international guidelines rather than engage within the experience of PHRBs which, although not in conformity with the guidelines, have great potential as platforms of deliberation and the application of local knowledge to prevent human rights violations in collaboration with state officials, who in local settings, may be more conducive to persuasion.

It is possible to speak, therefore, of the existence of a serious risk of overlooking the important experiences amassed by the PHRBs. These include the evaluation of thousands of allegations of human rights violations throughout the country, the good practices in answering these allegations and the lessons learned in failing to answer them. In addition, the process risks overlooking the culture of deliberation that has developed in a number of successfully functioning PHRBs comprised of a diverse set of actors from political parties, occupational organizations and CSOs, and the experiences of collaborating with state bodies and officials in local settings where local expertise and the creation of networks is critical in the promotion and protection of human rights. The PHRBs have operated as local platforms of

deliberation due to their diverse pool of members, however selectively determined. They presented areas of contact in which CSOs found the opportunity to struggle against, within, with or through the state, all the while changing mindsets, or having its own mindsets changed. The thesis argues that the experiences accumulated in such platforms need to be acknowledged and claimed by human rights advocates, which would allow PHRBs to be reformed (rotation of members, reducing the role of Deputy Governors, etc.) and articulated (by making use of the window of opportunity presented in the present HRIT Law) to the functioning of the HRIT in order to combine the advantages of local participatory human rights Boards with an autonomous human rights institution that can deal with and decide on issues which surpass the political clout of the PHRBs. Otherwise the HRIT risks being a self-fulfilling prophecy of human rights advocates in Turkey, whereby it is instrumentalized by the Government to legitimize its actions or displace outspoken CSOs.

CHAPTER II
A RELATIONAL VIEW OF THE STATE

A case will be made in this chapter in support of a relational approach to understanding what is termed as "the state". The most basic way of defining a relational approach is that it does not essentialize political institutions and agents. In other words, it avoids describing structures and actors in the political arena, or their powers/capabilities, as existing and explainable by any supposed unique properties that make them what they are. Relationalism eschews any generalization or characterization that attempts to define a certain institution or actor across space and time. Instead, an important tenet of relationalism is contextualization. Therefore relationalism states that the institution or agent being described does not exist on its own accord, but that it is, at any given point in time, a manifestation of the specific relation between actors acting in their specific contexts. This makes the state a certain institutional form (or form(s) taken by a set of institutions) that has materialized at any given point in history depending on the past and present actions of agents in a certain socio-economic setting, mode of production, etc., heavily affected by domestic, regional and international power struggles, norms and values that has resulted from the interaction of these actors. The state is therefore an outcome of a complexity of relational processes such as the struggles, articulations or deliberations taking place in a multitude of levels of analyses (domestic, regional, global) between different groups, classes, gender identities, etc.

This approach has two important advantages over functionalist and essentialist approaches. Functionalist approaches define the state according to the functions it is said to be responsible for performing. Such functionalist approaches have been common to liberal-democratic mainstream theories of the state (the state as a neutral arbiter among different interest groups), as well as orthodox Marxism (the state

functioning as the instrument of the dominant classes) and second-wave Feminism (the state functioning as an instrument of patriarchal domination).

A functionalist approach to the state locks the definition or form of the state through space and time. It is necessarily ahistorical, as its function does not change except for a change in the political regime that may result, for example, from a political uprising in the shape of a revolution. In contrast, as it does not define the state according to its functions *per se*, a relational approach is able to account for the instances whereby the state may fulfill functions that are unrelated to the assigned function, or simply may not be able to fulfill a certain function. These circumstances may lead to unexpected results or unintended consequences, which are subsumed under the concept of "contingency". Therefore, a relational approach, by placing institutions and agents into context in order to understand the specific relations between different actors and their outcomes that accrue in these settings, is better able to account for contingency.

An essentialist approach to the state argues that the state is a thing in itself, with specific characteristics such as dedicated personnel (the bureaucracy) and a monopoly on the legitimate use of force, both critical components of Weber's classical definition that will be discussed in further detail below. It will suffice to say at this point that classic institutionalist thought as well as new institutionalist scholars lay emphasis on the autonomy of the state from other social actors. It is seen as an actor in its own right. An essentialist approach, however, suffers from the same shortcoming as functionalist approaches, namely that it does not adequately account for the possibility that the development and functioning of the state is based on relations that are not necessarily located within the state or directed towards the state. Accordingly, essentialist accounts of the state fail to grasp the constitutive effects of these contingent outcomes on the form of the state. This shortcoming impairs institutionalism from accounting for the possibilities of drastic political, social and economic change resulting from unintended consequences and unexpected results. A relational approach, on the other hand, understands the state to be a dynamic structuring process in which a multitude of actors and institutions

play a part in the making with actions and ideas, rather than a pre-ordained homogenous entity consistently locked in opposition vis-à-vis actors generically called "non-state" actors by virtue of the supposition that they act outside the state's sphere of action.[4]

In order to contextualize institutions and actors, identify the specific relationship between actors and its consequences, a relational approach utilizes two very important ontological assumptions regarding the traditional "ideational-concrete" and "structure-agency" dichotomies. First, relationalism holds that a dialectic exists between what is termed the "ideational" and the "concrete". This distinction is seen to be purely analytical, and it is argued that the relationship is mutually interdependent. Ideas hold constitutive power, that is, they can transform into material realities. Material realities, on the other hand, mediate the context in which actors strategize and produce ideas. This context may facilitate certain strategies while limiting others, depending on the way in which the material reality (read institutions) were structured in the first place, which in turn is based on the competition of ideas set in the previous material reality. This brings us to the second dichotomy, namely that between the "structure" and "agency". Relationalism takes a similarly dialectic view to the relationship between structures and agents, as it argues that neither has an existence in isolation from the other. They exist through their relational interaction, as structures mediate human conduct while agents act within this structure to change it according to their politically articulated ideas and interests.

These ontological assumptions allow relationalism to bring agency and ideas back into political and social analysis in a way which purely structuralist or institutionalist accounts cannot. The main advantage of a dialectical view of the "ideational-concrete" and "structure-agency" dichotomies is the way in which it can account for change. Ideas of agents, played out in an environment of structural

[4] The consequences for using a functionalist view of the State will be exemplified through the democratization of the Turkish State narratives in the next chapter.

constraints and enablers, can have concrete effects in terms of being translated into a new structural formulation.

The argument in favor of the advantages of a relational approach will be supported by looking into the way in which Marxist, Feminist and Institutionalist theories of the state evolved to ultimately accept this view. First, important shifts experienced by these theories as a result of their debates with poststructuralism will be outlined. For Marxist, Feminist and new institutionalist theories, the adoption of poststructuralist insights led the way to transforming the classic view of the state as everywhere and every time an instrument of domination. Power was accepted as being able to develop outside the traditional aegis of the state (decentered), and that power struggles outside of the state could change the form of the state was acknowledged. Traditional identity categorizations defining actors in political movements were variegated both horizontally and vertically, as Marxists made room for other agencies besides social class while Feminists questioned the overarching concept of "women" by insights provided by intersectionality theory. The specificity of ideas and interests brought to the political arena by different groups, and therefore the different meanings people attach to social behavior and political action was acknowledged. New institutionalists, on the other hand, gradually moved away from their essentialist view of the state and found that by incorporating the role of ideas and agency they could better explain the phenomenon of change and contingency.

However, the relativistic implications of anti-foundationalist poststructuralist thought needed to be tempered without foregoing the insights gained regarding the ability to account for contingency. This was especially apparent for Marxist and Feminist theories in two important ways. First, on account of its ontological and epistemological position, poststructuralism argued that structures did not exist independent of social action, and that therefore no objective basis existed with which to observe actions or "infer the deep structures" (Marsh & Furlong, 2002, p. 31). Yet Marxist and Feminist thought are based on the ontological position that the world exists independently of our knowledge but that unobservable structures exist

which direct social action and perceptions. This allows Marxists and Feminists to argue that structures and institutions in society manipulate the way which social action is conducted and the perceptions held by dominated groups regarding their real interests. Secondly, in the absence of a concrete "state" as an institution directing political thought and action in a biased way towards the advantage of dominant groups in society and towards which political action could be directed in practice, their emancipatory ideals for the working classes and women in general risked becoming superfluous. This was remedied through the adoption of a critical realist epistemology, which continued to uphold that social phenomena exist independently of our interpretation of them, but that our interpretation affects outcomes. Critical realism also allowed for the notion that due to the fact that our knowledge of the world is fallible, relations between social phenomena can only be explained by trying to understand both external reality and the social construction of that reality (Marsh and Furlong, 2002, p. 31). In effect, this translated into a relational theory of the state which, as stated above, understood the relation between the "ideational" and the "concrete" as well as "structure" and "agency" as dialectical.

Finally, it will be argued that convergence of theories of state along a critical realist epistemology and a relational approach strengthens the arguments for adopting a relational, contextualized and dynamic, rather than a historically prejudiced and sedentary approach to defining the roles and capacities of political actors in general, and the state in particular.

2.1. The evolution of Marxist, Feminist and Institutionalist theories of state

The first step in the convergence of theories of state was the desire to move away from attributing to the state an all-encompassing/homogenizing and eternal function or purpose. For Marxism this was an economism defined by the constant primacy given to the base over the superstructure, or rather, the economic imperatives of the relations of productions formulated as the interests of the bourgeoisie over and

above the periodic political concessions towards opposing groups seen in the superstructure. For Feminist state theory, such functionalism resulted from characterizing the state in all forms as "patriarchal". Both positions had emerged as functionalist reactions to the pluralistic benign view of the state, or rather, the allegedly politically “neutral” state:

> When Dahl finds the origin of the state in the need for conflict resolution, he says, '…communities search for ways adjusting conflicts so that cooperation and community life will be possible and tolerable' (1972, p.5). He might have said, 'adjusting conflicts so that subordination of groups to other groups, or repression, or stratification will be possible.' That he instead uses happier terms like 'cooperation and community life' expresses what I mean by a view of politics as benign (Lindblom, 1982, p. 16).

Therefore, in their earlier conceptualizations both Marxist and Feminist state theory were formed as functionalist reactions against this liberal benign view of the state which allegedly overlooked the structural differences between the advantaged and disadvantaged that existed and was perpetuated by the state. However, it proved difficult to uphold such functionalism against theoretical (especially poststructuralist) and empirical counter-arguments, as it did not make room for contingency and unintended consequences that could possibly arise from the possibility of the state failing in its functions or its pre-planned strategies. Lindblom states the case against imbuing the state with a specific purpose or function with a descriptive analogy:

> Suppose a river flows through an isolated community, providing essential water without which the inhabitants would die. Suppose also the river annually floods with consequent loss of life and constantly carries pollutants into the community. If we talk the language of purpose, I take it that we would say the purpose of the river is to provide necessary water to the community. But a good model or theory of the river would not play up that effect on the community to the relative neglect of the adverse effects. The argument that the community needs, must have, cannot live without the river does not justify, in the model or theory of the river, denying prominent place to floods and pollution. As a guide to what goes into models or theories, there is no logical imperative that requires that an essential social purpose must be made the centerpiece (Lindblom, 1982, p. 14).

Refraining from imbuing the state with a certain function or purpose beyond all others is therefore one of the first steps to take in order to avoid functionalism. It comes as no surprise, therefore, that the first aspect of the convergence of state theories is said to have been the increasing emphasis placed on accounting for "contingency" (Lister and Marsh, 2006, p. 249).

The concept of "contingency" denotes the unexpected and the unintended. As such, it is diametrically opposed to any function assigned to an institution. In fact, the notion of contingency has been introduced as a reaction to functionalism, which characterized the state with the functions it was supposed to perform. First of all, this approach prevented the examination of cases in which the state performed other, equally significant functions. Secondly, it prevented the examination of cases in which the state failed to fulfill its supposed function, leading to unexpected results. Thirdly, it prevented an understanding of cases in which a strategy of the state to fulfill its supposed function backfired and impeded its efforts, leading to unintended consequences.

Pluralist and postructuralists are seen as the architects of the concept of contingency in regard to state theory. Pluralists understand power to be diffuse, with no single interest prevailing over others throughout history. Since the government does not champion any single cause, the outcome of policies is seen to be contingent. Poststructuralists, on the other hand, claim that there is no fixed reality outside of our understanding of it, and that "the meanings we attach to institutions and practices are contingent and constructed within discourses", so that an extra-discursive theory of the state that could be applied across space and time is impossible (Lister and Marsh, 2006, p. 249).

It was difficult for Marxist, Feminist or Institutionalist theories to accept the pluralist line of reasoning. After all, the *raison d'être* of the state for Marxist and Feminists was the maintenance and perpetuation of structural disadvantages in favor of certain groups. Institutionalist theories, on the other hand, would have a hard time accepting that the state is nothing but the instrument of governments that used

it according to their policies or political whims, arguing instead that the state was an actor in its own right. However, the poststructuralist version of the concept of "contingency" did strike a chord, and eventually led to what has been called the "ideational turn" or "cultural turn" experienced by various state theories, most notably that of Marxism, Feminism and Institutionalism.

2.1.1. Contributions of poststructuralism to Marxist state theory

Jessop (2008) outlines key insights that concern the creation of a more specific historical and comparative view of state, its powers and capacities, that came out of the revival of Marxist interest in the state in the 1960s and 1970s which had otherwise "imploded" due to highly abstract theorizing and the disregard for the historical variability of political regimes and the different forms taken by capitalism. This started to change in the late 1970s, when Marxist theorists started questioning the thesis, accepted to be the main argument of orthodox Marxism, that the state was essentially an instrument for the ruling classes. Mainstream (pluralist) theorists of political science stated that this led to a "conspirational model of dominance by property", but that "contemporary radical thought" accorded much more autonomy to the state than ever before:

> In some formulations, the state achieves autonomy because of the existence of competing capitalist fractions, to no single one of which the state is subordinate. In other formulations, the state to a degree responds to demands from the working class and is therefore not wholly subordinate to property. Or the state has to provide welfare benefits to all classes because they each provide an input necessary to the productive system. In still another formulation, the state responds to all interests within a set of constraints that protect the survival of capitalism. Some Marxists have also introduced explicit elements of pluralism into their analyses (Lindblom, 1982, p. 11-12).

However, an important turning point for state theory was a turn from functional analysis to form analysis (Jessop, 2008, p. 58). This meant that instead of focusing on how the form of the capitalist state was derived (hence the name "state derivation" for the debate affiliated with this view) from the functions it was said to have to perform on behalf of capital, the focus was instead shifted towards how the

present form of the capitalist state problematized and threatened its functionality, in terms of “capital accumulation and political class domination” (Jessop, 2008, pp. 58-59). This view was a reaction to functionalism, which invariably attempts to explain the characteristics of something with the function it performs. Problems arise, however, when one asks the question of whether this implies that the state is always able to successfully carry out the function it is required to perform. In other words, functionalism is misleading in that it cannot account for the potential failure of the state in performing the functions which the specific functionalist theory attributes to it (whether the theory in question is orthodox Marxism or radical feminist views of the patriarchal state). Moreover, functionalism cannot explain “unintended consequences” of the strategies pursued by different institutions within the state, as success implies only intended consequences. Such failure to perform functions, as well as unintended consequences of strategies pursued, must be explained in terms of the specific form of the specific state (or state institution) analyzed in a specific time period. Hence, “dysfunction may follow from form”, and political outcomes serving capital, or any other group for that matter, is not guaranteed (Jessop, 2008, p. 59).

The insight into the forces which determined the form of the state, however, necessitated that the state be seen as a complex social relation rather than as a reification in the form of a unitary class subject. Expressed as the foundation of an abstract structural force (such as “capital” or “the state”), the concept of “social relation” or “relational” is used to underline the view that the concept being described does not exist on its own accord, but rather as a manifestation of the actions of agents, past and present, involved in a specific form of relation with each other. To this effect, Jessop has made use of Poulantzas’s thesis, which he paraphrased as state power being an institutionally mediated condensation of the balance of forces in political class struggle (Jessop, 2008, p. 56). The exact words of Poulantzas are as follows: "The (capitalist) State should not be regarded as an intrinsic entity: like 'capital' it is rather a relationship of forces, or more precisely the material condensation of such a relationship among classes and class fractions…" (Poulantzas, 1978, p. 128-129). Such a view rejected an ahistorical,

essentializing view of the state, and therefore reflected a critical shift in Marxist literature:

> For just as there can be no general theory of the economy (no 'economic science') having a theoretical object that remains unchanged through the various modes of production, so can there be no 'general theory' of the state-political (in the sense of a political 'science' or 'sociology') having a similarly constant object (Poulantzas, 1978, p. 19).

The present form of the state in a specific space-time setting, therefore, is said to represent the outcome of the relational processes (struggles, articulations or deliberation between different agents –groups, classes, gender identities, etc.) that have accrued in that setting. Bob Jessop eloquently argues for the necessity for a "strategic-relational approach" in the following way:

> Theorizing the state is further complicated because, despite recurrent tendencies to reify it as standing outside and above society, there can be no adequate theory of the state without a theory of society. For the state and political system are parts of a broader ensemble of social relations and one cannot adequately describe or explain the state apparatus, state projects, and state power without referring to their differential articulation with this ensemble. This calls for a distinctive type of theoretical orientation that can take account not only of the state's historical and institutional specificity as a distinctive accomplishment of social development but also of its role as an important element within the overall structure and dynamic of social formations. It is just such an approach…that treats the state apparatus and state power in 'strategic-relational' terms (2008, p. 1).

In order to grasp the term "strategic", it is first necessary to outline the place given to agency, especially in the context of the work of Jessop. The strategic-relational approach is, according to Hay (2001), based on two ontological premises. The first is that structures do not pre-exist agents, due to the fact that structures can only exist by virtue of their mediation of human conduct. Neither agents nor structures are real, therefore, in the sense that neither has an existence in isolation from the other, their intercourse being relational and dialectical. In short, they do not exist in themselves but through their relational interaction. The second ontological premise of the strategic-relational approach, according to Hay, is that the distinction between the material and the ideational is purely analytical, complexly interwoven

and mutually interdependent. Ideas actors hold can transform into material realities, but only through the mediation of the context in which the actors exist (Hay, 2001). Because actors are seen to be capable of devising and revising means to realize their intentions, and are therefore "strategic", a dynamic relationship exists between the actor (individual or collective) and the context. To act strategically, "is, in short, to orient potential courses of action to perceptions of the relevant strategic context and to use such an exercise as a means to select the particular course of action to be pursued"[5] (Hay, 2001). This brings Hay to draw the conclusion that different actors in similar material circumstances will construct their interests and preferences differently and review (and revise if necessary) their perceived interest and preferences over time (as material circumstances and ideational influences change).

In formulating the strategic-relational approach, Jessop continuously pays tribute to Foucauldian approaches as well as the insights provided by discourse analysis. The former is based on Foucault's rejection of state theory as essentialist, especially with regards to efforts to explain

> state and state power in terms of their own inherent, pre-given properties. Instead it should be trying to explain the development and functioning of the state as the contingent outcome of specific practices that are not necessarily (if at all) located within, or openly oriented to, the state (Jessop, 2008, p. 66).

Other arguments of Foucault which show state power as being exercised not by a centralized or unified juridico-political power but by dispersed and multiple institutions, the ubiquitous nature of power, and the involvement of "the active mobilization of individuals and not just their passive targeting" (Jessop, 2008, p. 66), have all been critical to the strategic-relational approach, especially in terms of introducing important points of contingency into categories that used to serve essentialized accounts of the state. Similarly, post-structuralist theory and discourse

[5] Hay notes, however, that not all action is the product of explicit strategic calculation (i.e. rational choice theorists) Rather, "all action contains at least a residual strategic moment though this need not be rendered conscious" hence the distinction between intuitive, routine or habitual strategies in which strategies remain unarticulated and unchallenged, and explicitly strategic action in which attempts to "map the contours of the context" are subjected to interrogation and contestation (2001).

analysis have also played an increasingly important role in Jessop's constructivist conceptualization of the state:

> The state appears on the political scene because political forces orient their actions towards the 'state', acting as if it existed. But, since there is no common discourse of the state (at most there is a dominant or hegemonic discourse) and different political forces orient their action at different times to different ideas of the state, the state is at best a polyvalent, polycontextual phenomenon and its institutional architecture, modus operandi, and specific activities change along with the dominant political imaginaries and state projects (Jessop, 2008, p. 73).

Poststructuralist views in general do not understand the state to be a thing, but as an ensemble of practices whereby the political becomes the primary dimension of social existence in which social relations are constituted and contested. Rejecting the existence of a state acting as a center point to the complex ensemble of mutually limiting and modifying discursive practices understood to constitute the social (and not the "society" as this implies a completed, closed-off and unified entity which is rejected as a definition for the state as well as society), Laclau and Mouffe understand the state as having an evolving and unpredictable character, with the possibility of conflict and disaggregation constantly facing its bureaucracies, policies and ministries. A very important concept to underline here is that of "articulation". Articulation encompasses the combination and subsequent modification of phenomena in a way that is more than the sum of its parts – such combination is possible due to the view that no permanent 'essence' exists in these 'phenomena'. For instance capitalism, individualism and representative democracy is articulated to form capitalist liberal democracy: "It is important, then, not only to study what we imagine to be 'the things in themselves' but the relations between them" (Finlayson & Martin, 2006, p. 161). In this regard, the state is both a site and outcome of political attempts at hegemony (taken from Gramsci to mean the fixing of identities in a certain way as to impose a dominant meaning on social practices). It is not a single "institution" or a set of institutions, but a series of practices defined by the repetition of actions and reactions created from and in turn creating 'traditions' and 'habits' (Finlayson & Martin, 2006, p. 163). Poststructuralist accounts argue, therefore, that as long as state theory takes the state as its point of

departure it is not possible to demystify the existence of the state and that in order to demystify the state it should be seen as a product of our social existence rather than "a universal a priori predicate to our social existence" (Bratsis, 2002, p. 249). In this sense postructuralists reject the "object in thought" and "real object" distinction by arguing that the "belief" in an object's existence cannot be separated from its material existence.

Jessop therefore, combining Poulantzas's later work with insights obtained from Foucault and poststructuralist interpretations, holds that the state is a site that is shaped by the balance of class forces and has no institutional fixity or pre-given unity, and is therefore a "dynamic and constantly unfolding system" (Hay, 2006, p. 75).

2.1.2. The effects of poststructuralism on feminist theory

The literature on feminism is particularly well-suited to outline the ways in which neither the state nor civil society can be reified as constructs with "pre-given" and "unchanging" unity. This is because feminist literature has always been ideologically variegated, and its historical "evolution" has been described in terms of generational "waves", denoting paradigm shifts in the conceptualization of feminism with certain repercussions on the field for women's CSOs, especially in terms of their relationship with and sensitivities towards the state and other CSOs in civil society. In short, feminist literature and women's CSOs provide a fertile ground for analyzing the theoretical and practical dimensions of the state-civil society relationship.

An analytically useful way of comprehending the relationship between feminist approaches and the state is to map out what has been called the "in-out" dichotomy in the Anglo-American strand of state theory, describing the differing approaches taken by liberal and radical feminists with regard to their specific positions and strategies towards the state, and then to elaborate on the many insights gained by feminist critiques of and attempts to deconstruct this dichotomy (Kantola, 2006, p. 118). In brief, the liberal conceptualization of the state as a "neutral arbiter"

between competing interests has led to an understanding of the strategy to reform the state from the "inside" as a plausible one for liberal feminists. The state as a "neutral arbiter" is by definition one which takes on the qualities and interests of those who control its institutions. Recognizing that presently men exert a heavily disproportionate influence on the state, it is argued that this situation can be significantly altered with the inclusion of more women personnel in the state, which would presumably lead to the adoption of legislation working towards the promotion of gender equality as well as greater sensitivity to concerns voiced by women (Kantola, 2006, p. 119). Another related and crucial corollary of the liberal feminist approach to the state is the rejection of the differences between women and men in the public sphere and the belief that strengthening women's formal rights can confer on them equality with men as citizens in the public sphere (Kantola, 2006, pp. 119-120). On the other side of the dichotomy, radical theorists, particularly associated today with the "second wave feminism" which came to the forefront of discussions in the 1960s, used the concept of "patriarchy" to underline the systematic exploitation and oppression of women: "The concept of patriarchy captured the insight that the oppression of women was not haphazard or piecemeal but rather that the diverse forms of oppression women experienced were interconnected and mutually sustained" (Kantola, 2006, pp. 120-121).

Thus, the radical feminist approach branded the state to be "essentially patriarchal" regardless of particular forms it may take, argued that women's liberation depended on the dismantling of ubiquitous male domination, and emphasized that challenging this domination required channeling energy not into the state, but rather into and through civil society. In accordance with this view, consciousness-raising activities were organized during the "second-wave" in order to rediscover and celebrate what it meant to be a woman, give women political voice, and to value differences between the sexes (Kantola, 2006, p. 121).

Such insight concerning the systematic oppression of women has been a profound revelation for academia as well as political activism: "One of the important effects of feminist activism and scholarship has been to point to the ways in which

seemingly neutral categories are in fact sexed" (Scott, 1999, p. 83). Scott notes how the abstract individual has in the process been revealed to be male, how "declarations of human rights have been shown to be limited in intent and practice to men", the way in which professions, especially science, has been "redescribed as masculine"; how the "worker" in fact prioritized the "productive capacity and skills of men", and how in general "divisions between women and men have constituted, and been constituted by, the social and political arrangements of societies" (Scott, 1999, p. 98).

Similarly, in assessing the most important contributions of feminist scholarship on state theory, Jessop (2008) outlines three areas, namely the critique of the view that the modern state claims a legitimate monopoly over the means of coercion, the critique of the juridical distinction between "public" and "private", and the links between warfare, masculinity and the state. Briefly, in relation to the above-stated areas feminists have argued that: men are able to inflict and get away with violence in the private sphere, and oppress women in public spaces "through the reality, threat or fear of rape"; that the juridical distinction between "public" and "private" is actually a political concern and that presently it serves to hide a system of male domination, in that while women are historically excluded from the public sphere and subordinated to men in the private sphere, "men's independence as citizens and as workers is premised on women's role in caring for them at home", that formal citizenship rights do not stop oppression and subjugation in the private sphere; and that war is an expression of violent masculinity and that state legitimacy is structured in terms attributed to masculine behavior such as "rationality, calculation, orderliness, hierarchy, and informal masculine codes and networks" (Jessop, 2008, pp. 71-72).

Despite these crucial contributions, Jessop emphasizes a caveat to the concept of patriarchy as he specifically warns against the tendency to essentialize the state:

> Some radical feminist theories simply subsumed each and every state under the overarching category of patriarchal domination: whatever their apparent differences, all states are expressions of patriarchy or phallocracy

> and so must be opposed…insofar as patriarchy defines the core of the state and all else is treated as secondary, these views remain subsumptionist (Jessop, 2008, pp. 69-70).

Furthermore, feminists who attempt to derive the form of the patriarchal state from the role the state plays in reproduction (as opposed to production in Marxist accounts) are said to fall into the same trap of functionalism as Marxists attempting to derive the form of the state from its function of producing and reproducing conditions favorable to a capitalist mode of production (Jessop, 2008, p. 70). Jessop's solution points to feminist literature capable of attributing a certain degree of autonomy and contingency to the state:

> The best work shows that patriarchal and gender relations make a difference to the state at the same time as refusing to prejudge the form and effects of this difference…The same sort of approach highlights differences among women as well as between gender groups, and this is an important corrective to extreme forms of gender essentialism. Indeed there is now an extensive literature on the complex and variable forms of articulation of class, gender, and ethnicity in specific state structures and policy areas (Jessop, 2008, p. 70).

It is generally agreed that the "third wave" was born as a result of criticisms directed against the "essentialism" of the "second wave" and that it was divided, initially at least, into two political camps, namely those (such as black feminists) who pointed to the heterogeneity of women and poststructural accounts of feminism which outlined the social construction of class and regarded identities as categorizations stifling freedom (Nash, 1998, p. 47; Mann & Huffman, 2005, p. 58). Both "shared a focus on difference" (Mann & Huffman, 2005, p. 58), albeit in different degrees, and with very different strategic implications vis-à-vis the state.

The first approach has been called "intersectionality theory", the main proponents of which were feminists of color and ethnicity, who criticized second wave theorists "for alleged essentialism, white solipsism, and failure to adequately address the simultaneous and multiple oppressions they experienced" (Mann & Huffman, 2005, p. 58). The charge of "essentialism" basically denoted:

> …the problem that black feminists in particular have insisted on: not all women share the same socio-economic positions, cultural backgrounds and political concerns, so that to speak of "women" as if they were a homogenous group of persons is to collude with the exclusion of certain women from representation (Nash, 1998, p. 47).

Crucially, intersectionality also dealt with what was called "multiple and simultaneous oppressions", as second wave feminists were said to have treated multiple oppressions as distinct from one another, which enabled them in turn to place oppressions into a hierarchy of importance. In contrast, intersectionality theory argued that multiple oppressions were "simultaneous, inseparable and interlocking" (Mann & Huffman, 2005, p. 59). Collins describes this "new feminist epistemology" in the following way:

> The overarching matrix of domination houses multiple groups, each with varying experiences with penalty and privilege that produce corresponding partial perspectives [and] situated knowledges…No one group has a clear angle of vision. No one group possesses the theory or methodology that allows it to discover the absolute "truth" or, worse yet, proclaim its theories and methodologies as the universal norm evaluating other groups' experiences (Collins, 1990, pp. 234-235 quoted in Mann & Huffman, 2005, p. 62).

Once again, we see the objection of a failure to account for contingency being raised against metanarratives and categorizations. The literature on feminism has found itself increasingly having to qualify their structural narratives for smaller levels of analysis, which has always been a losing endeavor without a significant reconceptualization of the narrative.

The problem is, however, that such challenges to narratives can potentially be never-ending. This can most concretely be seen in the challenge of poststructuralism to identity politics and intersectionality theory. The postmodern or poststructuralist feminist approach centered on the critique of oppositional categories and analyses of oppression. Identity was not seen as a socio-politically liberating concept, but was rather viewed as a "construct of language, discourse and cultural practices", which created power relations that was "disciplinary, restrictive and regulatory" (Mann & Huffman, 2005, p. 63). Based on such a view of identity

politics, poststructural feminists pointed out that the objections of essentialism raised by intersectionality theory towards second wave feminism were merely reproduced in their own accounts of group difference, only now in more refined categories. Therefore, identity politics could be seen as dismissive of further heterogeneity, for instance among women of color or ethnicity, and on the basis of class and sexual orientation (Mann & Huffman, 2005, p. 62). The point of resisting categorization was to allow for the possibility that identities could change, and to encourage the free formation of new identities. An important literature in this regard is queer theory, according to which "sexual or gender identities (and, by analogy, all other identities) tend to be ambivalent and unstable and sexual orientations and practices are 'polymorphous'" (Jessop, 2008, p. 158). In fact, the poststructural approach can take this view even further, criticizing the sex/gender distinction:

> The seeming clarity of the distinction between sex and gender obscures the fact that both are forms of knowledge. Employing the opposition 'natural versus constructed' perpetuates the idea that there is a transparent 'nature' that can somehow be known apart from the knowledge we produce about it (Scott, 1999, p. 71).

Scott builds on this ontologically anti-foundationalist view by stating:

> These questions push toward different kinds of analyses from those that tried to assess the impact of particular regimes or policies on women (did women's condition improve or deteriorate with the French Revolution?) or the emancipatory effect on women of the vote or increased labor force participation. They do not assume the abiding existence of a homogenous collectivity called 'women' upon which measurable experiences are visited. Rather, they interrogate the production of the category 'women' itself as a historical or political event, whose circumstances and effects are the object of analysis….Instead of reinscribing the naturalized terms of difference (sex) upon which systems of differentiation and discrimination (gender) have been built, analysis begins at an earlier point in the process, asking how sexual difference is itself articulated as a principle and practice of social organization (Scott, 1999, pp. 78-79).

Kate Nash's (1998) overview of feminist theories of democracy is crucial in this respect, especially with regard to the insight that essentialism may be, to a certain degree, an inescapable consequence for wanting to engage in political action. Nash arrives at this point by comparing and contrasting theories of democracy stipulated

by Iris Marion Young, Anne Phillips and Chantal Mouffe, pointing out that their mutual search for a way to represent women without essentializing a given identity ultimately fail, albeit in different degrees.

Young's theory of "group democracy" for instance, built on the criticism of liberalism's role in perpetuating existing disadvantages in societies where differences between groups exist through its adherence to the ideal of equal treatment, formulates an ideal of democracy rejecting the "impartial view of the common good transcending all particular interests, perspectives and experiences" and putting to the fore the participation of citizens based on their specific experiences and interests (Nash, 1998, p. 46). Therefore, different groups are to be treated differently, meaning an "institutionalization of difference" in democracy (Nash, 1998, p. 47). However, Nash argues that Young's group democracy, although paying lip-service to anti-essentialist views of group identity by its definition of a group as a historically specific product of social relations which are fluid and contextual, nevertheless reproduces essentialism as political representation is premised on inclusion in a group, requiring in turn "the listing of a set of attributes as criteria for the inclusion of group members" (Nash, 1998, p. 47). Anne Phillips's view of representative democracy, on the other hand, is built on the criticism of Young's proposals as carrying the potential for "freezing differences between identities" as well as the failure to account for which identity is to be represented on any particular occasion given the point that the "individual is the site of multiple identities" (Nash, 1998, p. 51). Phillips's proposal emphasizes representative democracy and a quota system in the selection of party candidates for election, with the view that increasing the number of women in decision-making and policy-determining processes would put women's concerns on the political agenda (Nash, 1998, p. 51). However, the quota systems are also criticized by Nash to be essentializing because they would,

> in singling women out for special treatment, risk freezing, or even creating, a group identity of women in politics (possibly, as in other cases of affirmative action, as less competent, less committed and so on) and thus of hindering change in other areas (Nash, 1998, p. 52).

Moreover, in trying to escape from the potentialities for essentialism harbored in Young's theory, Phillips promotes a theory of representative democracy whereby individuals are encouraged to "stand back from" themselves in the "specifically political public sphere" (which must be differentiated from the private sphere) in order to take "into account the difference between particular concerns and considerations of the general interest" (Nash, 1998, p. 52). This view is criticized by Nash as a step back to liberal-democracy and liberal individualism, which in turn requires a re-explanation of why the public-private distinction will not do!:

> Even if, as Phillips recommends, feminists now give more attention to representative democracy as a way of revitalizing the public sphere, we will still want to consider how issues and perspectives come to be considered there, how they are informed by positions and identities which are not represented in the processes of formal democracy – which may well, on Phillips's own admission, continue to be gender-blind – and how certain issues get excluded (Nash, 1998, p. 52).

Finally, Chantal Mouffe's theory of "radical democracy" is evaluated in terms of its similar aims with the other theories to construct a democratic theory without either ignoring or essentializing identities, and is assessed as the most successful of the three views. Radical democracy involves a rejection of Young's group representation as essentialist, with an emphasis on democratic identities being constructed, rather than represented on the basis of pre-given interests, in the political process. Moreover, for Mouffe politics is a confrontational act that always entails the construction of oppositions through alliances which necessitates the "us vs. them" conceptualization (Nash, 1998, p. 53). Radical democracy, as a project to extend the principles of freedom and equality to areas overlooked or subsumed by liberal-democracy, holds an anti-essentialist view of individuals as bearers of multiple and shifting identities, thereby "enabling…an appreciation of the contingency of identities and of the alliances between them" (Nash, 1998, p. 54). Nash questions, however, whether Mouffe can uphold her claim that a conceptualization of citizenship on the basis of gender-differentiation would be "inappropriate because it would necessarily involve the essentializing of identities" through her conceptualization of radical-democracy (Nash, 1998, p. 54). This is

because as a project involving an engagement with politics through alliances formed around different understandings of the principles of democratic citizenship, radical democracy necessarily involves the rejection of certain interpretations of these principles and the institution of its own "definitions" in more "concrete and particular" forms, which may well involve gender-differentiation, which may in turn risk essentialism (Nash, 1998, p. 55). But at this point, it can be seen how Nash is exerting a greater effort to weed out the potential essentialism out of a particular democratic theory, and indeed, she uses Mouffe's radical democracy to argue that a certain degree of essentialism is necessary in order to effect real change:

> On the other hand, what Mouffe's attempt at an anti-essentialist citizenship for women indicates, I take it, is that a more egalitarian polity requires the institution and maintenance of specific forms, including forms of gender identity, which feminists concerned with substantive equality for women should support. So while democracy requires a refusal of fixed, exclusionary identities in order to be genuinely open to all citizens, if the aim is genuinely to increase the participation of all in the wider society then it may also require support for policies which institute relatively stable gender identities in the name of equality (Nash, 1998, p. 56).

A similar view, especially in terms of formulating a feminist approach to democracy with a heightened sense of effecting real change in the lives of women, can be seen in Marxist-feminist approaches that have been able to employ self-criticism for past mistakes and which can utilize a critical realist epistemological position to overcome the positivist-interpretist dichotomy. Marxist feminist theorists admit having hierarchized oppressions and privileged class oppression in analyzing social relations, and how Marxist-feminist theories can overlook the ways in which "emancipatory theories can be dominating, exclusive and disciplinary" (Mann & Huffman, 2005, pp. 78-79). Nevertheless, Marxist-feminist theorists still point to the problem of "adjudicating among knowledge claims" as "any notions of greater truth" are lost due to the relativistic "multiple-realities" claims of the most stringent poststructuralist accounts (Mann & Huffman, 2005, p. 78). Thus, while insights into the "simultaneity and multiplicity of oppressions" provided by the third wave is highly valued, a crucial caveat is placed which holds much in common with radical democracy theory: "However, we do not think that all forms of

oppression are equally important at any time and place in history" (Mann & Huffman, 2005, p. 77).

The above discussion shows how the feminist paradigm shifted from second wave feminism which branded the state in all its forms as "patriarchal" to third wave feminism as a result of the demands of women whose experiences with public and private oppression differed from women who were privileged as a result of their skin color or social class. Ironically, the rise of the third wave feminists went hand in hand with poststructuralist thought which stood against fixed or essentialized identities as a whole. Anti-essentialist poststructuralist accounts deconstructed the category of "women", which paved the way for third waves feminists who wanted to lend voice to the grievances of women who suffered multiple oppressions due to their social class, race, sexual preferences, religion, etc. However, poststructuralism needed to be rejected, in the end, to continue social activism in the name of women's human rights. For this purpose, an amount of essentialism was regarded as inevitable, as the women's movement increasingly moved to engage the state by acting through, with and within state institutions.

2.1.3. The role of ideas in the revival of institutionalism

The main characteristic of institutional theory is the importance it places on the importance of political institutions for structuring political behavior (Steinmo, 2008, p. 118). Institutions are defined as rules, either formal rules and organizations or informal rules and norms: "Whether we mean formal institutions or informal rules and norms, they are important for politics because they shape who participates in a given decision and, simultaneously, their strategic behavior" (Steinmo, 2008, p. 124).

Nevertheless, the way in which institutions were interpreted marks the greatest distinction between the "old" and the "new" institutionalisms. In the late nineteenth and early twentieth century, institutionalism is said to have emerged as a modern academic discipline concerned with how formal institutions, such as constitutions, affected political behavior (Steinmo, 2008, p. 119). The emphasis was placed on the

formal institutions of government and the state was defined in terms of its political administrative and legal arrangements, using a descriptive and comparative methodology to explain relations among levels and branches of government (Schmidt, 2006). Not surprisingly, the most referenced definition of the state was that of Weber, who famously noted:

> A "ruling organization" will be called "political" insofar as its existence and order is continuously safeguarded within a given *territorial* area by the threat and application of physical force on the part of the administrative staff. A compulsory political organization with continuous operations (*politischer Anstaltsbetrieb*) will be called a "state" insofar as its administrative staff successfully upholds the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order. Social action, especially organized action, will be spoken of as "politically oriented" if it aims at exerting influence on the government of a political organization; especially at the appropriation, expropriation, redistribution or allocation of the powers of government (Weber, 1921/1978, p. 54).

Two points in this classic definition of the state, still used by institutionalists, is noteworthy with regard to the thesis at hand. The first is that Weber's definition is not a functionalist one. This is because rather than defining the state through the functions it is said to be in charge of, it defines the state according to its *modus operandi*. Therefore the state is defined "in terms of its organization and deployment of the means of coercion and physical force" (Hay & Lister, 2006, p. 8). As a set of institutions with a dedicated personnel, the state is differentiated from civil society, allowing "state managers to develop an array of distinct interests, preferences and capacities which cannot be explained by reference merely to societal factors" (Hay & Lister, 2006, p. 8). Thus, the state is defined by a set of attributes that is necessary for its being. In many ways, this is an *essentialist*, rather than *functionalist* reading of the state, essentialism being defined as "The doctrine that it is correct to distinguish between those properties of a thing, or kind of thing, that are essential to it, and those that are merely accidental. Essential properties are ones that it cannot lose without ceasing to exist" (Blackburn, 1996, p. 156). The state is a distinct "thing" in this account from societal factors. Its function is then, by definition, its own maintenance or perseverance. This is why Hay and Lister state that "Institutionalists and neo-statists, whose indebtedness to Weber is perhaps

the clearest, have concentrated on the mechanisms by which the state preserves (or at least seeks to preserve) its monopoly of authoritative rule-making" (Hay & Lister, 2006, p. 8).

The second point, interrelated and substantiating the first one, is that any political action is so-called by the fact that it aims to influence this reification, and has a stake in trying to appropriate, expropriate, redistribute or allocate the power that lies therein. This clearly demarcates the state as an entity where all (legitimate) power lies; an entity engaged with by other actors in society (with an emphasis placed here on organized groups) for the purpose of acquiring, using or sharing in that power.

The "old" institutionalism, however, fell into disrepute following the demise of what was then touted as the "model democracy" of the Weimar Republic, the breaking out of the Second World War, and the post-war failure of "finely designed democratic institutions" which "fell to dictatorship, autocracy and even chaos, throughout the developing world" (Steinmo, 2008, p. 119). Two strands of thought superseded the old institutionalism, both of which argued that institutions were political instruments, and that it was the agents or the system at large that needed to be analyzed. Accordingly, "behaviorism", emerging in the 1960s and 1970s, adopted the positivist epistemology that human and social behavior can be explained in terms of general laws established by observation. Institutional analysis was seen to be historical and descriptive, but not scientific. A scientific analytical approach required the breaking down of the world into its constituent parts and understanding each specific part independently of the other (Stienmo, 2008, p. 121). The focus was placed squarely on phenomena that could be quantified such as voting and public opinion through electoral studies, survey research and opinion polling (Schmidt, 2006, p. 101). On the other hand "grand theorists" such as Marxist, system theorists, and modernization theorists, believed the most important analysis to lie in "processes and mechanisms motivating politics across nations, cultures and history", and relegated institutions to functional solutions to social problems or arenas where struggle or conflict took place (Steinmo, 2008, p. 121).

What has been called "new institutionalism", was born out of efforts to “bring the state back in”, a result of criticisms towards what were called “society-centered” approaches that emphasized society as the arena in which the form, functions and impact of the state were generated (Jessop, 2000, p. 4). In opposition to so-called “input oriented” theories of politics that emphasized the pressures and influences brought to bear upon the state, new institutionalist scholars underlined the capacity of the institutions of the state to respond to such pressures (Schmidt, 2006, p. 98). In attempting to bring the institutions of the state back into the explanation of political action, new institutionalism rejected the behaviorist notion that political action could be reduced to its methodological individualist parts, and argued “that behavior cannot be understood without reference to the ‘institutions’ within which such behavior occurs” (Schmidt, 2006, p. 101). Furthermore, “real-world outcomes” could only be explained through the examining of real-life events in their specific spacio-temporal context, rather than assuming that different patterns can all be encompassed through, for example, class structure or elite power (Steinmo, 2008, p. 123). Therefore, taking Weber’s conceptualization of the state as a set of institutions with a dedicated personnel, institutionalists argued that politics needed to be institutionalized contextually or “in other words to see the conditions of political opportunity as being…set institutionally” (Schmidt, 2006, p. 98). It should be emphasized that new institutionalism was not so much a rejection of the institutionalist tradition, but rather an expansion on the forerunners’ work. One of the most important examples of this is the broader way new institutionalists define institutions, namely as referring to recurring patterns of behavior, and informal conventions of political life alongside the formal constitutions and organizational structures (Lowndes, 2002, p. 91). This shift, however, was what allowed new institutionalism to expand its epistemology and incorporate constructivist approaches into its explanations of the world. Ideas regarding institutions could now be brought into explanations of the state-society relationship, thereby strengthening the hand of new institutionalists in overcoming the oft-cited criticism that institutionalist theory as a whole was weak when trying to explain change.

Institutionalists focused on the ability of state managers to act autonomously from non-state forces, along with what has been called the "infrastructural power" of the state to infiltrate, control, supervise, police and regulate society, and the way these state capacities were aided or hindered by specific institutional structures of particular states (Hay & Lister, 2006, p. 8). Succinctly put by Jessop, new institutionalists believe that "the state is a force in its own right and does not just serve the economy or civil society" (2000, p. 4-5). It is important to note that statist-institutionalists justify the analysis of the state as an autonomous agent as a crucial enabling factor for the comparison of state capacities across the globe, and critize Marxist scholars for generalizing the state form in all capitalist relations of production. In contrast, new institutionalists, instead of focusing on whether states in general are autonomous, claim to analyze the "differentiated instances of state structures and actions" and thereby point to the circumstances under which autonomous goals are pursued and conditions in which they are likely to be successful. As an example, a branch of new institutionalism, namely "historical institutionalism", stresses that political institutions are not independent entities existing out of space and time, but rather, that they are "embedded" in particular contexts, resulting in "path-dependent" policy making (Lowndes, 2002, p. 101). This meant that policies decided on by a particular state in a particular place and time would invariably be affected by previous policies made in that context, which would create a dependency to make a certain kind of policy due to the institutional constraints created by previous policies. Here, contextualization is once again key:

> Rather than treating all political action as if fundamentally the same irrespective of time, place or context, historical institutionalists explicitly and intentionally attempt to situate their variables in the appropriate context…In sum, for historical institutionalists, *history is not a chain of independent events* (Steinmo, 2008, pp. 127-128).

On its own, however, the concept of "path-dependency" revealed a very troublesome aspect of new institutionalist theories. Most had a difficult time explaining how change came about in social policy-making or state-civil society relations (exemplified in the widespread failure to explain the collapse of communism). The explanation of change for institutionalists was especially difficult

as they argued from the assumptions that any given institution is a cog in a wheel of institutions, whereby change in one implies a change of rules in others, thereby creating resistance from those that are already in an advantaged position. Furthermore, it is assumed that human expectations are formed around a given set of institutions, and that changing these rules may result in difficulty for agents in predicting long-term effects. In addition, a change in rules may be resisted by those who have invested in learning these rules, not desiring to bear new costs (Steinmo, 2008, p. 129).

Once again, the constitutive role of "ideas" had a very important role to play in rectifying this problem. Historical institutionalists started taking account of how new ideas became embodied in institutional forms (Blyth, 2002) and new strands of institutionalisms sprang up which allocated primary place to ideas. Not just ideas, but values, beliefs and how individuals understood their interests became key points in explaining institutional change. Understanding ideas to be “creative solutions to collective action problems”, Steinmo argues that “institutional change comes about when powerful actors have the will and ability to change institutions in favor of new ideas” (2008, p. 131). As noted above, the concept of institutions was expanded and other approaches within the umbrella of new institutionalism placed even greater importance in defining institutions as norms, cognitive frames and meaning systems that guide human action.

For instance, one strand of new institutionalist theorizing, namely "sociological institutionalism", pictures the state as socially constituted and culturally framed, and claims that political agents act according to the "logic of appropriateness" (read internalization) that follow from culturally-specific rules and norms. In this account, rationality is socially constructed, making it culturally and historically contingent. Institutions set the limits of the imagination and establish the preferences and identity of agents. Therefore, “seemingly neutral rules and structures actually embody values and power relationships”, thereby determining the appropriate behavior within given settings (Lowndes, 2002, p. 95). The understandings and norms that agents share frame their action, shape their identities, and influence what

they see as problems and solutions (Schmidt, 2006, pp. 107-108). Finally, certain scholars have pointed to an additional institutionalism called "discursive institutionalism", which is characterized by its consideration of the state in terms of the ideas and discourses actors use to explain, deliberate and/or legitimize political action in a specific institutional context (Blyth, 2002; Schmidt, 2006). Discursive institutionalists claim their primary concern to be with ideas and the way in which these ideas are communicated through discourse. Contrary to sociological institutionalists who place emphasis on static ideational structures such as norms and identities constituted by culture, discursive institutionalists underline that ideas are more dynamic, allowing actors not only to conceptualize the world but also to reconceptualize it (Schmidt, 2006, p. 112).

Whether one is convinced by the razor thin differentiations of the various strands of new institutionalism, it cannot be denied that the engagement of new institutionalism with “ideas” has allowed it to bring agency back into the equation. Vivien Lowndes, for instance, notes: “Crucially, new institutionalists concern themselves not just with the impact of institutions upon individuals, but with the *interaction* between institutions and individuals” (Lowndes, 2002, p. 91). This relational reading of the dichotomy between institutions (structures) and individuals (agents) is a crucial facet of the convergence of state theories along a critical realist epistemology.

2.1.4. Convergence around a critical realist epistemology

Poststructuralists and other anti-foundational positions, it will be remembered, argued that reality is socially and culturally constructed. The "idea" of the state, therefore, contributed to making the state a reality:

> The discovery that the *idea* of the state has a significant political reality even if the state itself remains largely undiscovered marks for political sociology a significant and rare meeting of empiricism and a possible theory of the political. In other words the state emerges from these studies as *an ideological* thing (Abrams, 1988, p. 68).

In the accounts of the cultural turn experienced by theories of state remarked above, one can discern an advantage of new institutionalism in incorporating the role of ideas and the constructivist view posited by post-structuralist accounts as compared to Marxist and Feminist theories of state. An important reason for this is that new institutionalism cannot be described as "a theory" as such, but rather as a broad approach to politics which merely asserts that institutions are both *explanans* and *explanandums* in explaining the world. Institutionalism therefore has the advantage of being able to comparatively assess competing propositions from different theories in explaining a certain event in a specific space-time setting (Lowndes, 2002, p. 108). The advantage of institutionalist theories in taking on board "ideas" and therefore being able to lend greater weight to agency in explaining world events is explained through a historical institutionalist lens in the following manner:

> Marxism, rational choice and pluralism alike all assume that interests are the driving forces of politics, and that ideas are either justifications or simply 'noise'. While traditional behavioralists have no *a priori* reason to argue that ideas are irrelevant to politics, it is clear that ideas are difficult to measure and quantify and are therefore left out of these analyses for practical reasons. Historical institutionalists, however, are not wedded to a particular grand theory or to a specific methodology; consequentially, "ideas" have come to take a central place in their analyses (Steinmo, 2008, p. 130).

While it is a simplification to state that ideas are seen by Marxists as simply "noise", it nevertheless does point to a problem regarding the internalization of the "cultural turn" by emancipatory theories[6] such as Marxism and Feminism. These theories have traditionally approached the state in functionalist terms, as an instrument of power which worked directly or indirectly for the advantage of dominant groups in society. Accepting poststructuralist arguments in its entirety threatened to undermine the real structural inequalities in society allegedly maintained and in some instances perpetrated by the state. The ability of these

[6] By "emancipatory theory" I mean theories which hold that a group, class, or identity in society is disadvantaged due to structural discrimination against them, which direct the way in which the state acts and the selectivities it employs.

emancipatory theories to put their theory into practice would be drastically hurt, it was believed, by dispelling the notion of a state altogether and relativizing all identities (derived from social class, or gender) into so many justified groupings. There is a singularity to the evolution of emancipatory theories such as Marxism and Feminism, especially because they are more often than not engaged in a mission to obtain equality for a disadvantaged group in practice. Having a particular institutional object, such as the "state", to direct the necessary political strategies and efforts becomes very important. This is why such theories find it difficult to do away with the state altogether:

> There seem to be compelling reasons within marxism for both recognizing that the state does not exist as a real entity, that it is at best an 'abstract-formal' object as Poulantzas puts it, and for nevertheless discussing the politics of capitalist societies as though the state was indeed a thing and did 'as such, exist'…Marxist theory needs the state as an abstract-formal object in order to explain the integration of class societies…At the same time marxist practice needs the state as a real-concrete object, the immediate object of political struggle…one can easily see that to propose that the object of that [political] struggle is merely an abstract-formal entity would have little agitational appeal (Abrams, 1977, pp. 69-70).

Indeed, one salient criticism of poststructuralism is that invocations of the "state" or "government" as though it did represent a unified purpose are frequently made by social and political forces, and that "the inviolable symbolic unity of the state is invoked to justify the use of organized force against 'enemies' within and without its boundaries", especially during times of hegemonic crises. During such times "the state is invested by certain groups with a unity of purpose that legitimates its distinctive repressive functions and articulates its diverse elements around a relatively coherent project" (Finlayson & Martin, 2006, p. 170). The criticism is not that poststructuralists simply do not see that the state exists, but rather that it cannot account for the fact that at times of hegemonic crises, repressive functions of the state are exercised in favor of the dominant power bloc.

Poststructuralism is also criticized for over-emphasizing discursive processes, and the shifting of attention away from institutions and policies. As Jessop puts it: "...discourse-analytic work often misses the deep-rooted, extra-discursive structural

conditions that shape the effectiveness of state power" (2001, p. 15). This leads to several problems, such as underestimating "the difficulty of achieving change compared with the relative ease of reproducing status quo power relations" (Kantola, 2006, p. 130) along with a neglect of "the continued importance of law, constitutionalized violence, and bureaucracy for the modern state" (Jessop, 2008, p. 67).

The general influence of the "cultural turn" on state theories, therefore, did not entail accepting the impossibility of a theory of the state. Rather, the point that was adopted by Marxism and Feminism was that a ***general*** theory of the state was not possible, that is, a theory of the state which could be used across time and space. In many respects, this shows how both Marxist and Feminist theories of state started approximating new institutionalisms with regard to the emphasis placed on contextualizing the state in its specific space-time environment. This approximation is best explained through the way in which a convergence in theories of the state is occurring where proponents of Marxist, Feminist and new institutionalist theories are increasingly adopting a critical realist epistemology.

Critical realism provides an epistemological position that does not forego ontological foundationalism, but still emphasizes the constitutive role of ideas. Heavily influenced by the interpretist critique of realism that structures do not exist independently of social action and cannot be inferred through any type of objective basis, what has been called "critical realism" is based on the following ontological and epistemological positions:

> First, while social phenomena exist independently of our interpretation of them, our interpretation/understanding of them affects outcomes. So, structures do not determine; rather they constrain and facilitate. Social science involves the study of reflexive agents who interpret and change structures. Second, our knowledge of the world is fallible; it is theory-laden. We need to identify and understand both the external "reality" and the social construction of that "reality" if we are to explain the relationships between social phenomena (Marsh & Furlong, 2002, p. 31).

Therefore, overcoming the dichotomies of the ideational-concrete and structure-agent relied on the acceptance that ideas can have constitutive effects which, when articulated with agency, could account for change. The influence of constructivist thought, especially as seen under sociological or discursive institutionalism, can be seen clearly in this regard. Robert Fine succinctly states the necessary steps for contextualizing the state:

> A philosophy of right must grasp both aspects of the idea: the concept and its existence or actualization. Consider the concept of the state: it is one aspect of what the state is. But if it is abstracted from its existence, if it is viewed in isolation from the shapes in which it is actualized, then it is necessarily "one-sided" and "lacking in truth". This would be a case of mere conceptual thinking (Fine, 2001, p. 279).

The shape in which the state is actualized, even if it does start off as an abstraction, is elucidated by Mitchell:

> A construct like the state occurs not merely as a subjective belief, incorporated in the thinking and action of individuals. It is represented and reproduced in visible, everyday forms, such as the language of legal practice, the architecture of public buildings, the wearing of military uniforms, or the marking out and policing of frontiers. The cultural forms of the state *are* an empirical phenomenon, as solid and discernible as a legal structure or a party system (Mitchell, 1991, p. 81).

Just as accepting that the constitutive role of ideas did not necessitate relinquishing the visible, everyday forms of the state, accepting a dialectical approach to the structure-agency dichotomy did not necessitate abandoning the dichotomy altogether, as suggested by poststructuralism. Poststructuralists refute the necessity to establish the relationship between structure and agency, as there is no "structure" or "agency" which exists and can be comprehended outside of the discourse we use. The "all-embracing" category of discourse is said to have transcended the dualism. However, such a view fails to consider the possibility that structure and agency are more than mere arbitrary discursive constructs, and that they exist independently of our construction of them, and that it may be "possible that phenomena such as structure or agency may produce effects on social reality without these being articulated in discourse" (McAnulla, 2002, p. 283). These may include structural

constraints born out of, for instance, capitalist social relations, policy path-dependency or patriarchal attitudes which we as agents are not aware of.

The strength of Jessop's strategic-relational approach is its ability to incorporate constructivist thought with an explanation of real structural inequalities in society. The state in this account is a manifestation, reflection, crystallization, etc. of the outcome of the conflict of past strategies by agents. Thus, due to the fact that the state is located within a complex dialectic of structures and strategies that have come about as a result of the conflict of past strategies, the institutions which comprise the state are strategically selective, meaning that the structures and modus operandi of the state are more open to some types of political strategy than others, presenting an uneven playing field that favors certain strategies and actors over others (Hay, 2006, p. 75). As such, the form of the state in a specific spatio-temporal setting is strategically selective, in that it favors certain strategies over others. The state also means something different to actors in different space time settings. This is a far cry from functionalist and deterministic accounts of the state whereby the form of the state is derived from its "pre-given" function. Rather, in a relational approach, the state enables certain actors and their strategies, and constrains others, without any predetermined outcome. Moreover, actors formulate their own strategies, they are reflexive, albeit within a mediating (constraining and enabling) context because of their partial knowledge of the structures which limit or empower them. Room is also given to the possibility that "actions can lead to changes in the structural context which are unanticipated or unwanted" (McAnulla, 2002, p. 281), leading to the development of new enabling and constraining structural conditions. Colin Hay and Michael Lister refer to this line of thinking about the state as "institutional contextualization":

> …whether the state is seen functionally or organizationally - as a set of functions necessitating (in so far as they are performed) a certain institutional ensemble, or as an institution itself - it provides a context within which political actors are seen to be embedded and with respect to which they must be situated analytically. The state, in such a conception, provides (a significant part of) the institutional landscape which political actors must negotiate (2006, p. 10).

Compare this explanation of the strategic-relational approach with a point made regarding the structure-agency dichotomy by a historical institutionalist:

> Bringing ideas into our understanding of institutional change, then, brings agents back into institutional analysis. One could argue that a key weakness of institutionalism in the past has been that actors could be simple hostages of the institutions that they inhabit. Integrating ideas into the analysis addresses this problem by making institutions both a constraining/incentivizing force and the object of political contestation (Steinmo, 2008, p. 133).

The extent of the convergence of the strategic relational approach with historical institutionalism can be seen by the similar approaches adopted towards unraveling the structure-agency dichotomy, without refuting the existence of either. Agents act in institutional environments in which they find themselves either constrained or empowered depending on the successes or failures of past agents and ideas on changing or preserving institutions. The major institutional environment, or environment for institutions, is the state.

It can also be argued that Feminist scholars became more and more involved in theories of state following the reaction against poststructuralist feminist accounts attempting to deconstruct women's subjectivity and identity, as it was argued that the conceptualization of "women" and "men" as shifting variable constructs acted as an obstruction against women's struggle against oppression:

> Postmodernism undermines the feminist commitment to women's agency and sense of selfhood, to the reappropriation of women's own history in the name of an emancipated future, and to the exercise of radical social criticism which uncover gender "in all its endless variety and monotonous similarity" (Benhabib, 1995, p. 29 quoted in Kantola, 2006, p. 130).

The most interesting aspect of the evolution of Feminist state theory is that, in very similar fashion to Marxist state theory, it has adopted certain postructuralist insights and wedded them to concrete research on context specific institutions. Today, feminists increasingly feel the need to engage the state in their theoretical or practical endeavors, especially in order not only to interpret and explain state transformation, but also to understand the real and potential effects of this

transformation for women, especially in the context of debates surrounding globalization, multi-level governance and institutional change. Positions have already been taken on all these issues; feminists debate the gender-specific consequences of globalization, pointing that women have had to compensate for "state retreat" and for the increasing failure of the state to provide social infrastructure and support, while others argue that the reconfigured state offers opportunities and limitations for women's movements and feminist agendas (Kantola, 2006, pp. 131-133). Indeed, state feminism, which deals with the activities of officially charged government organs dealing with women's rights and status, along with gender mainstreaming, which evaluates "the implication for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels" have become areas of interest for feminist research in recent years (Kantola, 2006, p. 132). In engaging the state, Feminist scholars have found the need to combine discursive and comparative methods, thereby focusing "on context-specific discourses, institutions and agency rather than abstract theorizing" (Kantola, 2006, p. 133). It is only natural then that the strategic-relational approach is as viable for Feminists as it is for Marxists:

> For an adequate strategic-relational analysis of gender relations would refer to the constitution of competing, inconsistent, and even contradictory identities for both males and females, their grounding in discourses and fantasies about masculinity and/or femininity, their explicit and/or implicit embedding in various institutions and material practices, and their physico-cultural materialization in human bodies. It is especially important how specific constructions of masculinity and femininity, their associated gender identities, interests, roles, and bodily forms come to be privileged in the state's own discourses, institutions, and material practices (Jessop, 2008, p. 158).

Such an analysis requires, however, the rejection of the notion that there is a "single, well-defined and strongly institutionalized form of patriarchy with its own distinctive logic" and the acceptance that "gender regimes are always and everywhere overdetermined by at least class, nation, ethnicity, and 'race'" (Jessop, 2008, p. 161).

2.2. Concluding remarks

Marxist, Feminist and Institutionalist theories of the state have incorporated the poststructuralist view that an ontological separation of the "ideational" from the "concrete", of "structure" from "agency" and of the "state" from "society", tends to reify institutions by attributing to them pre-determined roles which do not reflect contingent outcomes and unintended consequences, and silences the role of agency that in effect constructs reality. The importance to take into account such contingency, as well as the significance of the ideas and perceptions of agents acting within institutions in the construction of reality, has led Marxist, Feminist and even Institutionalist theorists to distance themselves from the original essentialist, functionalist and deterministic positions so frequently criticized by poststructuralist theories.

This so-called "cultural" or "discursive turn", however, was later tempered due to the necessity to keep the emancipatory character of the theories mentioned, deriving from their insights into the existence of real structural inequalities. Rather than do away with the ideational-concrete and structure-agency dichotomies, therefore, these theories have opted to use a relational view based on a critical realist epistemology that could better analyze, explain, understand and act on the relationship between institutions and agents.

The strength of relational approaches thus lie in their ability to assess scenarios that are uncertain, fortuitous, accidental and reversible, as well as approach these scenarios from a multitude of agents' perspectives. In opposition to reification through the attribution of pre-determined roles or functions to the state, a relational theory argues that the state has reached its present manifestation or its present capabilities though the actions of individuals which have struggled for economic, social or political recognition outside, inside and through the institution(s) concerned. As such, it emphasized the need to contextualize any analysis of the state, and therefore of the relationship between state-society or structure-agency, within the time and space it is occurring. As a consequence of acknowledging the

role of structure-agency, structure-structure and agency-agency conflicts in the creation of institutions, relationalism also paves the way for an understanding of the present manifestation of the institution(s) in question as being open to the possibility of change, by providing for contingencies which enable structures to be shifted and changed by agency, all the while accepting the fact that agency in turn is constrained or facilitated by the structure.

CHAPTER III

THE DICHOTOMOUS READING OF THE HISTORY OF STATE-CIVIL SOCIETY RELATIONS IN TURKEY

Much of the literature purporting to explain the growth (or failure) of civil society in Turkey and its relation to the state, is to a great extent guided by the "legacy of the Ottoman Empire" narrative, or rather, the frequently used historical account depicting the state in Republican Turkey as being a derivative of the central administrative/military structure in the Ottoman Empire, the Palace, and the bureaucratic elite it engendered. The continuity is often based on the notion of a "center-periphery" divide, which is said to characterize both periods. In this narrative, the "center" invariably denotes the "elite" occupying places of "power" within the state who were and are consistently engaged in an attempt to "engineer" society to approximate Western values, while the "periphery" is generally taken to mean the masses whose traditional values and potential for democratic participation in the state and the market are repressed by the former group.

The dichotomy is such a powerful tenet in these narratives that the struggle between the "center" and "periphery" is said to have formed Turkish political culture, while being responsible for the failure of democratization efforts in Turkey today. More specifically, the purported failure of a culture of association to develop within Turkey is tied to the repression of the periphery in general, and the resulting failure of the development of an autonomous bourgeoisie in particular. This historical narrative has been the dominant discourse in explaining Turkey's failure to emulate Western democratic institutions. The discrepancy between the democracies of the West and Turkey are explained through a "relativist" paradigm, which is clearly based on a "distinctive ontology", whereby the "state" is imbued with a "being" determined outside of society:

> In these eclectic accounts, the Ottoman-Turkish state not only appears to deserve its treatment as an autonomous structure with a logic and interests of its own, but its differentiation from the society becomes a structural feature of its formation. Identified with self-conscious and self-determining agents in the form of state elites, and differentiated by its institutional structures, it would seem to signify a (form of) reality with its own "rationality" (Yalman, 2002, p. 24).

Such an ontological separation between the "state" and "society", put forward as a unique feature of Ottoman-Turkish political history, has been crucial in the creation of the development of a non-relational ontology with which to explain the lack of a genuine civil society and bourgeoisie in Turkey as compared to an ideal-type of civil society in the West.

A very basic outline of the said narrative can be delineated as follows: A cultural differentiation and distancing of the state and state elite from a specific conceptualization of the "people" as "subjects" (*kul*) in the Ottoman Empire, coupled with Westernization attempts that were led by a central and centralizing bureaucracy, which was in constant suspicion of the power of notables in the provinces, led to a specifically Ottoman modernization whereby the economic sphere and the emergent bourgeoisie was stifled. The Republic of Turkey inherited this divide as well as the jealousy of central state power from an ever encroaching bourgeoisie. This jealousy was reflected in the engineering efforts of first the Young Turk revolutionaries and later the Kemalist elite, in power through the Republican People's Party and its *etatist* ideology. The periphery, always an actor for democratization, was in a constant battle with the state in a zero sum game, finally prevailing with the 1950 elections in which the Democrat Party, the representative of the periphery, triumphed. The 1950 elections are thus viewed as a watershed in Turkish political history, whereby the emancipation of society from the yoke of the central bureaucracy was initiated. However, due to the legacy of strong centralization and a lack of Western style democratic institutions guaranteeing true pluralistic democracy, Turkey's democracy grew into one ruled by clientalism and patronage relations. Moreover, the development of Turkish civil society, in a period of thirty years as of 1950 marked by three military coups, was

marred by ideological interference, as a result of which the civil society scene, rather than being autonomous, was instrumentalized by prevalent ideologies. This turned civil society in Turkey, in comparison with its Western counterparts, into a politicized "mutation". The real development of non-politicized issue-based civil society (a liberal-prescriptive definition of civil society) only came into being following the 1980 coup, depicted as a period in which external "forces" such as "globalization" and the European Union candidacy process, along with internal non-class based politics (due to the climate of repression following the coup) were important determinants. This environment was conducive to the creation of post-political discourses attempting to form a non-ideological "universal" line with help from the EU ideal as well as EU practical training and funds.

While much of the literature follows the above stated narrative, there have, recently, been important caveats placed into this broad framework by academicians who have attempted to bring a more relational account into the narrative. These attempts, it will be argued, are important steps to rectifying the simplification perpetrated by the dichotomous analysis.

3.1. The origins of the dichotomy in the Ottoman Empire

The most important characteristic differentiating the Ottoman state experience from European states is said to be the former's lack of support or basis of legitimacy in society. Such legitimacy, it is claimed, would have only been possible if different classes in the periphery were integrated into the center, which in turn was dependent on there being a confrontation and compromise between the center and periphery: "The forces that shaped the state in the West seem to vary significantly from those that shaped the Ottoman state before modernization set in" (Mardin, 1975, p. 8). The Western modern state had centralized through confronting, compromising with and integrating fractions of feudal society and later industrial labor. Such integration, compromise and concessions allowed Western European politics to encompass various political identifications, thereby enabling it to be more "flexible" (Mardin, 1975, p. 8). Mardin's use of the term "flexible" here denotes the

impression he has of modern states in Europe being more readily identified with sections of society it had confronted in the past. Mardin states that these confrontations were multiple, including those between state and church, nation-builders and localists, owners and non-owners of the means of production (Mardin, 1975, p. 8). No such multiple confrontations and integration could be talked about in the Ottoman Empire, however, as

> …the major confrontation was unidimensional, always a clash between the center and the periphery. In addition, the autonomy of peripheral social forces was not more than anything de facto, an important difference from the institutional recognition accorded, for example, to estates in Western Europe… (Mardin, 1975, pp. 8-9).

The important point to note here is that Mardin does not say that confrontation did not exist in the Ottoman Empire, but rather that there was only one major confrontation, that between the center and periphery, evidenced by constant attempts of the former to repress the latter, and that following these confrontations the periphery was never really integrated into the center. This is what, according to historians such as Mardin, Heper and Karpat, made the Ottoman Empire unique, and what ultimately created the basis for the state in Republican Turkey.

In this regard, the writings of Mardin and Heper show great similarity. One common point expressed by both authors, for instance, is the center's fear and distrust of the periphery. Mardin notes that while the Ottoman Empire was successful in building a patrimonial bureaucracy and a centrally controlled army, it had to do this in an environment in which a pre-empire nobility endured, lineages were still powerful, religious orders possessed autonomous power bases and a variety of ethnic and religious groups existed (1975, p. 9). Heper similarly lists intransigent local notables, a very heterogeneous society with various religious communities, brotherhoods and local guilds, as well as being surrounded by "powerful and rapacious neighbors", as challenges to Ottoman rule, which leads him to state that "…it comes as no surprise that the fear of disintegrative influences was the leitmotiv of Ottoman statesmanship for a long time" (1985, p. 24).

Another very important reason for the origins and longevity of the sharp dichotomy was the recruitment of Ottoman officials from non-Moslem groups, thus making them loyal slaves (*kul*) to the Sultan, a practice which differed from the practice followed by absolute monarchs in the West who drew their servants from among the small rural nobility. The children recruited in this fashion would lose all connections with their families and past lives, and due their specific position of isolation from the rest of society, could only develop camaraderie with their peers in the Palace, with no hope of transferring their duties or wealth to Muslim born children. This effectively prevented them from forming into a social class with independent social and economic interests (Ahmad, 1999, pp. 29-30). These officials were later deployed into critical posts and were distanced from the religious establishment, which was increasingly identified with the periphery, especially during drives for modernization (Mardin, 1975, pp. 10-11; Heper, 1985, p. 22). Moreover, Heper contends that the Ottoman state did not give up sovereignty to Islam, mainly due to the fact that the lack of emphasis on public life in Islam as well as the orthodox version of Islam which the Ottomans adopted gave the Sultan full religious legitimacy and power to run the state as he saw fit, including the power to appoint and dismiss members of the religious institution (1985, p. 27).

Ottoman officials, or rather, the Ottoman bureaucracy, were given privileges which added to their higher status in society, especially in comparison with merchants, who were generally of non-Moslem communities (primarily Greek, Armenian and Jewish) and who, despite playing a very important economic role in the Empire, were never given the power to influence the state in line with their own interests (Ahmad, 1999, p. 32). Officials, on the other hand, were not taxed, and were seen as emanations from and extensions of the ruler: "As an extension of the Sultan, however, each official, in his relations with people, was a mini-sultan himself" (Heper, 1985, p. 29). This led to a very significant cultural divide between the center and the periphery, as the state was "permeated by the myth of the majesty of the Sultan" and state officials spoke the Ottoman language (an amalgam of Persian, Arabic and Turkish), mostly inaccessible to the population at large (Mardin, 1975, p. 12). The rigid cultural divide thus existed between those comprising the “great

culture" associated with the palace who dealt with war and administration as life-time occupations, were free from taxation, and used the Ottoman language and the "little" culture (the derogative term *reaya* or "flock" was used) which was made up of the rural masses and Turkish tribesmen, who used Turkish vernacular, made a living off the land, and were "taxed to the gills" (Mardin, 1969, p. 270). This divide in culture was distinguishable mostly in the city/urban - province/rural divide:

> A "slave" bureaucracy, a standing army, a treasury, a rich literature, books for interpreting the word of God – all these gave to the Ottoman elite the feeling that they were far superior to the always large contingent of newly settled or semi-settled Turks and could easily manipulate them. Indeed, the concept of *medeniyet* (city-dwelling, or civilization) was the core of the self-image of the Ottoman ruling class and of its pretensions. By contrast, the term "Turk" was used in a pejorative sense because it meant being tribal (Mardin, 1969, pp. 270-271).

In terms of property rights, the Sultan had full rights on arable lands outside the cities as all feudal rights were abolished and nothing stood in the way of the Sultan to confiscate large areas of land held by *vakif*s and private individuals, which indeed was the case as the state confiscated land and assigned it as fiefs (*timars*) for cavalrymen who also collected taxes (Mardin, 1975, p. 12; Heper, 1985, p. 23). The uniqueness of the Ottoman fief system, however, was that the fief holders were equal with peasants before the law, could not hold more than the small parcel of land allotted to them temporarily by the state, and thus never possessed autonomous political powers vis-à-vis the state (Heper, 1985, p. 23).

Despite the perennial distrust of the periphery emanating from a center made up of isolated patrimonial bureaucrats, the Ottoman state is said to have refrained from completely integrating ethnic, religious and regional particularisms during the expansion of the Empire: "No attempt was made for a more complete integration when loose ties proved workable" (Mardin, 1975, p. 10). Yet when it did not become workable, the state spiraled into a despotism which was facilitated by the sharp structural differentiation of the earlier period between the center and the periphery. The cleavage worsened during this time between the governing elite and

the excluded periphery, as the peasants looked to local notables to uphold their interests in the face of increasing taxation by the center (Mardin, 1975, p. 14).

A very similar account is given by Heper, who notes that the Ottoman socio-economic structure disintegrated due its failure to compete with the "fundamental transformations that took place in the patterns and volume of production and trade" - by which he means the introduction of capitalist production relations in Europe - and the decrease in war booty due to increasingly frequent military failures, all of which occurred when new war technology required the abolishment of the fief system, and the institution of tax-farming in order to enable spending large sums from the central budget (1985, pp. 29-30). The inauguration of tax-farming is said to have created a new stratum of local notables, namely the *ayan*, and Sultans started losing power over their functionaries who, in a relationship of patronage, had begun to group around ambitious *pasha*s who had made their fortune out of tax farming due to the pay offs received from bankers to secure tax-farming rights to local notables (Heper, 1985, pp. 30-31). In such a conjuncture, the Ottoman state started showing "signs of extreme transcendentalism (i.e. arbitrary rule)" (Heper, 1985, p. 31). Despite these developments, however, the local notables could not, or would not become an autonomous power source in the provinces against the center:

> Perhaps due to their having been completely subordinated for centuries, the local notables did not show any aspiration towards forming horizontal links that might have led to the emergence of a genuine civil society or, at least, a *Standesstaat*, or policy of estates (Heper, 1985, p. 32).

Besides the "subordination for centuries" explanation, a more convincing one is that local notables opted for vertical links with the bureaucratic center as tax-farming required them to tighten their connections with the state (Heper, 1985, p. 32). This vertical relationship was built on an individual basis as each local notable tried to use the powers delegated to him by the state against both the state and the peasants (Heper, 1985, p. 33). However, this tension was never resolved, as the sole alliance was built on a strictly interest-based platform, with both sides (the notables and some members of the bureaucracy) exploiting the resources of the state:

> If some of the policies of the centre eventually benefited the local notables, it was unintentional…what is important is that the centre in the Ottoman polity attributed to the periphery neither the status of a genuine civil society nor even that of an estate (Heper, 1985, pp. 33-34).

Indeed, while "the rapid expansion of western power in its economic and political dimensions gradually forced the Empire into a process of integration and exploitation" it is necessary to bear in mind that "this evidence should not mask the fact that the process was also linked to a complex set of internal factors ranging from conscious policies of the state to the social and economic changes undergone by certain sectors of Ottoman society" (Eldem, 1999, p. 197). In fact, it can be said that the conscious policies of the state were necessitated by these internal factors. Karpat notes the "essential fact" that the socio-cultural-economic structure of the Balkan and Middle Eastern societies transformed as a result of the impact of internal forces "long before massive European influence accelerated this transformation" (1972, p. 243). The said "internal factors" actually denotes the rise of the "ayan" in the midst of the breakdown of traditional systems of military and economic administration (the dissolution of the "timar" system and the inauguration of tax-farming) and the Ottoman state's reaction to the threat of numerous local power centers that undermined its own rule by resorting to the "modern" political administration of centralization:

> The military reforms undertaken by sultans Mustafa III (1757-74) and Abdulhamit I (1774-89), despite the great importance attached to them by scholars as the formative bases of a new elite, as the first channels of communication with the West and as the foundations of new modes of thought, had in reality a more modest goal, namely to assure the survival of the state against external and internal challenges (Karpat, 1972, p. 245).

In fact, as the ayans rallied the support of the local ulema and the janissaries, strengthened local autonomy, and weakened the hold of the central authority over the provinces including the Balkans during a critical period of social transformation in this region of rising nationalism, the endeavor of Sultan Selim III to create a new order and a modern army, the "Nizam-i Cedid", was not merely due to a desire to beat Europeans at their own game, but also to the necessity to assert central authority over the ayans (Karpat, 1972, p. 252). Centralization necessitated new

public administration methods, and so great was the desire to centralize that the government undermined large landholdings of Rumelia and Anatolia in order to reduce the power of the upper Muslim groups, even if this meant indirect support for the Christian masses against the ayans and janissaries (Karpat, 1972, p. 253). During Selim's time in power there emerged a small group of men acquainted with western languages and positive sciences. And although Selim III was deposed after the Janissary revolt of 1807, and his successor Mahmud II had to sign the Sened-i Ittifak with the ayans in 1808 which assured mutual recognition between the notables and the throne, the movement towards centralization was not quelled. Instead, it put centralization into a stronger track, as the authority of government officials were confined to their offices and areas of assigned jurisdiction, which Karpat observes as an essential step in political modernization, namely the differentiation and definition of administrative functions (Karpat, 1972, p. 253). Heper also notes that the Sened-i Ittifak was not the product of confrontation initiated by the periphery, but rather one initiated by bureaucrats of the center who used key notables of the era such as Alemdar Mustapha Pasha to strengthen the center's hold over power (Heper, 1985, p. 38). The periphery, on the other hand, was "only interested in preserving its influence in a limited sphere" and acted along with the state in order for it to better control its agents in the localities which were potential rivals in local exploitation (Heper, 1985, p. 39).

Indeed, the modernization of public administration continued, as Mahmud II created a Directorate of Vakfs in 1826 known as the Evkaf in order to concentrate these institutions of Islam which performed public welfare functions, and used their revenue for government expenditures. Police functions were given to a special police department ("Zaptiye Müşiriyeti") in 1845, and Greek interpreters were replaced with Muslims in the creation of the Translation Bureau in 1833, which later became the training ground for Ottoman diplomats and for the new intelligentsia (Karpat, 1972, p. 255). Moreover, the Grand Vizirate was divided into ministries of Civil Affairs, which became the Ministry of Interior in 1837, and Foreign Affairs, while the Grand Vizir became Prime Minister (Karpat, 1972, p. 255).

The most long-stretching and continuous era of reform came about with the Tanzimat (Re-organization) edict or the Noble Rescript of the Rose Chamber, which was promulgated on 3 November 1839, and which is generally seen as the official proclamation of intended changes in administrative, social and cultural structure that began in the 18th century, as a result of the realization that institutional reforms were needed to re-unify the political structure of the Empire and thereby strengthen the state against both external and internal threats. Proposed by a group of young Ottoman bureaucrats led by Mustafa Reşid Paşa, the Rescript guaranteed the security of life, honor and property of the subject, abolished tax-farming, ensured fair and public trial of persons accused of crimes, and proclaimed the equality of persons of all religions in the application of these laws (Gül & Lamb, 2004, pp. 421-422; Lewis, 1961, p. 105). What the Edict established was to make public certain western norms of legitimization. This meant that whereas westernization until 1839 was limited to technology, science and education and used only to develop the military power of the state, with the Tanzimat Edict the ideologies of the west were also imported (Çelik, 1996, p. 28).

Warning against a unilinear understanding of the reform process which would produce "the erroneous idea that the overall process of change initiated and experienced by the state and its major structures amounted to a dues ex machine type of western intervention", Eldem, specifically points to the links between the inspiration of western forms and, at a later stage, ideas, with the process of modernization that had been initiated in the 16th century, and states that this modernization involved "a rationalization of bureaucratic structures aiming at an optimization of central control over the territories and resources of the Empire" (1999, p. 197). Therefore, it would be correct to say that

> the European model of military and political modernization, beyond its immediate appeal as a way to oppose the western powers in the international arena, offered to the Ottoman ruling class a vision of political and administrative centralization quite consistent with their own objectives at a national level (Eldem, 1999, p. 197).

Heper notes that the Rescript was an effort to introduce legal safeguards for the bureaucrats, while leading statesmen of the period (including Reshid, Ali, Fuad and Mithad) rallied behind the idea that institutions should replace individual rulers (1985, p. 44). This was the reasoning behind the creation of the Ottoman Parliament of 1877, which was seen by the centre as nothing more than an instrument for manipulating the periphery (Heper, 1985, p. 40). Karpat agrees as he argues that the Tanzimat Edict of 1839 was not a turning point in the transformation of the Ottoman state, but rather instrumental only in accelerating the centralization and bureaucratization of the Ottoman Empire, as it rallied the masses behind the throne and bureaucracy in their struggle with the ayans (1972, p. 258). Kandiyoti, in turn, notes that the Tanzimat period saw the abolition of tax-farming and the introduction of direct taxation which limited the power of provincial landowners, along with the introduction of state control of the vakif and the establishment of secular education undermined the independent position of the ulema (1991, p. 24). Thus power was increasingly concentrated in the hands of " a new class of Ottoman imperial bureaucrats", while the reforms created deep cleavages in Ottoman society, alienating certain social groups from the modernization process such as craftsmen, artisans, the urban lower middle class, etc., who turned to Islamic forms of resistance (Kandiyoti, 1991, p. 25).

It is interesting to note that the entire history of the Ottoman Empire, from its inception to late reform processes is explained through a zero-sum power game between the center and periphery, whereby the gulf between the two has never, or perhaps even could never have, been bridged. Heper uses the concept of the "transcendentalist" state as well as derivatives such as the "moderate" or "extreme" transcendentalist state to demarcate the periods in Ottoman history where the state moved further away from, or closer to, an arbitrary (transcendentalist) or partially non-arbitrary (moderate transcendentalist) regime of rule. These changes depend, in Heper's account, on the perennial internal ambition of the state to quell peripheral challenges incited by opportunities opened by both internal (e.g. inauguration of tax-farming) and external (e.g. military defeat by Western powers and their consequent influence on Ottoman polity) factors. On this account, the Ottoman

legacy for the Turkish Republic is seen to be a moderate transcendentalist state in two forms; that which is premised on the ruler and that which is premised on the bureaucracy, the former reflected in the period spanning Abdulhamid II's rule between 1876-1909, while the latter lay the infrastructure for the Young Turk era, in which the bureaucratic elite operated both in the ranks of the civil service as well as the political party which held the revolutionaries, namely the Committee for Union and Progress (1985, p. 46).

3.2. Continuity of the Dichotomy in the Republic of Turkey

The "continuity" thesis, namely that the Republic of Turkey inherited and continued the Ottoman state tradition defined by a privileged center's distrust and suppression of a periphery has at its core the fundamental premise that an autonomous bourgeoisie never existed in the Ottoman Empire, either due to the direct efforts of a jealously centralizing and elitist bureaucracy or due to the circumstances which pushed notables into rationalizing to form vertical links with the bureaucratic centre rather than horizontal links amongst themselves which may have led to the "emergence of a genuine civil society" (Heper, 1985, p. 32). Mardin also notes that increased autonomy could have been had for the price of defiance of state power or outright rebellion, but where this occurred, "the local notables were no less interested in squeezing the peasants than was the state" (1975, p. 14).

A different opportunity seems to have presented itself by the end of the nineteenth century as market values penetrated into Anatolia, and notables started taking on economic pursuits, thus acquiring a "uniformity - if not a unity- which it never had before" (Mardin, 1975, p. 17). However, this movement was paralleled with the greater penetration of the state into the periphery, and yet again the notables failed to become an autonomous force vis-à-vis the state. This, according to Mardin, was due to the fact that the notables were brought closer to administrative officials as a result of the encroachment of the state into the periphery with new obligations (taxes, military service, etc) and benefits (regulation of justice, roads, etc.), combined with the susceptibility of middle and lower ranking officials to be bribed

due to their low wages, leading notables to establish patronage and client relations with state officials, rather than become an autonomous force. In fact, in the wake of the Young Turk Revolution of 1908, notables obtained seats in Parliament and specifically stood for administrative decentralization and a continuation of local control over culture (Mardin, 1975, pp. 18-19). Notables in the periphery, due to a lack of a politically influential civil society, resorted to backing a "party centered polity":

> By a “party-centred polity” is meant a political party system largely autonomous from social groups; it replaces 'bourgeois politics', where social groups have weight in the polity. Its emergence has been attributed to the absence in the Ottoman-Turkish polity of a civil society with political influence. The particular state of affairs, it is suggested, has been significant for the non-injection into the Turkish polity of the norms of rationality, moderation, and compromise, and the consequent drift of Turkish politics to extreme instrumentalism, or to a debilitating pluralism (Heper, 1985, p. 101).

Party politics was especially prominent in the Young Turk period, which had inherited from the Abdulhamid II regime a state that had penetrated further into the periphery than ever before, due in part to Abdulhamid II's paranoia and desire to keep control of even the smallest details of the Ottoman administrative and military system, as well as increasing centralization helped along with technological innovations such as telegraph lines connecting the provinces to the center (Mardin, 1975, p. 26). The government's visibility thus increased in the localities, which "meant that all kinds of new values dependent upon government approval were available: permission to exploit a stone quarry to which government held title, the allocation of tithe farming, contracts for public works and positions on local administrative bodies" (Mardin, 1975, p. 26). Local notables thus understood the importance of controlling the local party structure, and certain families allied themselves closely with the Committee of Union and Progress (Mardin, 1975, p. 26).

Here we see the recurrence of a pattern which is so crucial to the dichotomy narrative. The first facet of this pattern is that despite the infighting within the

Palace between different conceptualizations of what kind of power or security the bureaucracy was to hold, and even if such infighting created a Parliament (as in 1877 and 1908), the bureaucratic elite's drive to jealously guard its power against the periphery and to constantly look for ways to modernize and centralize the Ottoman Empire never changed. Another non-changing recurrence seems to have been the tendency or propensity of the notables to engage in patron-client relations and bribery with government officials rather than allying horizontally with other notables and forming a class consciousness of their own. This propensity is not, it must be said, clearly explained by Heper or Mardin, as the only explanation is an implied rational-choice by the notables of gaining the edge over their rivals within a race to furnish close relationships with the power center. The natural result of these patterns then happens to be the constant failure to bridge the center - periphery gap caused by and constantly resulting in the failure of the emergence of a civil society with political influence. The narrative constantly tells us one thing: modernization without a politically influential bourgeoisie is destined to fail in its aim of social legitimacy, and can therefore never bridge the gap between top-down modernizers and the public at large.

This is clearly seen in the description of the failure of efforts of first the Young Turks and later the Kemalist regime to bridge the gap between the center and the periphery. The actions of the notables during the Young Turk period (1908-1918), was noted above as representing localism in Parliament and allying with locally powerful state officials in the provinces in a patron-client relationship. The Young Turks sought to attain cultural and educational unification throughout the Empire, but their "ineptitude and incipient nationalism combined to undermine what support they might have gathered for their regime", thereby deepening the cleavage with the periphery (Mardin, 1975, pp. 16-17). Immediately following the Ottoman defeat in World War I and in his efforts to wage a war of independence against occupying Western powers as well as to build a nation-state which Mardin defines as "architects of Kemalism trying to establish their own center", Mustafa Kemal Ataturk had to face this cleavage and the constant threat that Anatolia would be split on primordial group lines due to the reaction of the forces of the periphery due to

the periphery's equation of the Kemalist center as being a continuation of Young Turk rule and the policy of centralization (Mardin, 1975, p. 17). The cleavage manifested itself in the nascent Grand National Assembly as a "Second Group"; a diffuse alliance of notables led by alienated members of the official class who put forward concrete demands in tune with their Islamist and decentralist tendencies (such as education through religious schools, prohibition of alcohol, etc.) (Mardin, 1975, pp. 21-22). Following the end of the War of Independence, The Republican People's Party of the Kemalists used its victorious standing and the justification of an ever present threat of a Kurdish rebellion (Sheikh Said Rebellion of 1925) and later of religious reactionism (the Menemen revolt of 1930) to quell opposition movements within the Parliament. Between the years of 1923-1946 the periphery was seen as suspect by the center, which kept a close eye on developments in the provinces. The Republic of Turkey thus formed through its attempts to preserve itself against the periphery, due to the fact that it was dependent on the notables for connecting with the peasants and the population at large. Mardin notes that while the Kemalist revolution could have been achieved in a number of alternate ways such as actively opposing the notables, providing real services to the periphery or through an ideology (as seen in Russia and China) focusing on the peripheral masses, the Turkish state merely prioritized the strengthening of the state vis-à-vis the notables. He also notes that this was a wise decision, as the Republic was weak economically and militarily, and because the Republican People's Party was not able to establish contact with the rural masses (Mardin, 1975, pp. 23-24). This state of affairs, along with the top-down attempts at integration inherited from Ottoman social engineering and premised on a view of peasants as backwards and local religious or ethnic groups "as irrelevant survivals from the dark ages of Turkey", left local notables in control over the peasantry (Mardin, 1975, pp. 24-25). The cultural divide also continued as a result:

> A sharp cultural divide, inherited from the Ottoman era, dominated the early Republican period of 1923-1946: a coherent, modernising, 'progressivist' center that comprised elites who believed in an Image of Good Society built around 'science and reason', versus a culturally heterogeneous periphery whose masses believed in a contrasting 'Image of

> Good Society' built around tradition as represented at its core by religion (mainly Sunni Islam) (Kalaycıoğlu, 2002a, p. 248).

The continuing divide was no doubt a factor in the furnishing of the Turkish state's image as an "omnipotent control mechanism", and a "fearsome tool in the hands of the center" (Kalaycıoğlu, 2002a, p. 250). An important factor which pushed this image further, according to Kalaycıoğlu (2002a, p. 250), included the patronizing attitudes of the bureaucrats in their dealings with the periphery, which can be compared with Heper's statement, quoted above, that Ottoman officials saw themselves and acted as though they were mini-Sultans. Another inheritance was the educational system: "In short, the educational institutions of both the Ottoman Empire and Republican Turkey have fostered the concept of a paramount and tutelary State" (Akarlı, 1975, p. 136).

The first multiparty elections occurred after a period of more than 20 years of single party rule by the Republican People's Party, in which the RPP was closely associated with and integrated into the state itself. Following the end of the Second World War, however, the need arose to address the accumulated hardships and pressures burdened by the population throughout the war. Moreover, dictatorial regimes had been defeated during World War II, which pushed Turkey into forming better relations with the victors. However, the option of political and economic liberalization met with stern resistance from inside the party:

> The prospect of liberalization constituted an implicit threat to the power and influence of this heavily dominant elite, particularly in view of the development of a burgeoning new middle class of professionals and commercial elements during the preceding years of relative political calm and stability (Tachau, 1991, p. 102).

One of the most important reasons for the transition to a multi-party regime, however, was the strong opposition to a Land Reform Bill enacted by the National Assembly in January 1945, which envisaged redistributing land from big landowners to farmers who held no property as well as tenants. A major landowner himself, Adnan Menderes opposed the law strongly. During these arguments, President Inönü, in his Presidential address of 1 November 1945, declared in favor

of multi-party politics for the "proper functioning of the atmosphere of freedom and democracy" (quoted in Tachau, 1991, p. 103). Four leading RPP dissidents formed the Democrat Party, but were not given enough time to organize and campaign when elections were moved ahead from 1947 to 1946, and thus lost to the RPP in what was the country's first multi-party general election. By 1949, throughout RPPs stay in power, a considerable liberalization of government policies ensued, primarily in the economic field but also on such existentially important issues for the Republic as religion (the introduction of religious instruction into primary schools, establishment of preacher training programs) (Tachau, 1991, pp. 103-104). At this point the unbridgeable divide is mentioned again: “Try as it might, however, the RPP was unable to shake off its image as the representative of a haughty and oppressive reform-minded elite which was out of touch with the average Turk, particularly in the rural hinterland" (Tachau, 1991, p. 104).

Reasons given for the RPP's loss is a crucial element in the dichotomy narrative, as it is these reasons which justify the argument that the dichotomy was real and felt by the periphery, who responded by bringing the Democrat Party into power in a landslide win over the RPP. Accordingly, Mardin notes the two widest explanations as being the dissatisfaction with RPP rule among the peasants and the opposition of notables in the Parliament against the Land Redistribution Law, and then goes on to add a couple more: the appeal of the DP to private enterprise who felt hampered by bureaucratic controls established on the basis of the "war economy" during World War II, and the Democrat Party's successful appeal to Islam as the culture of the periphery (Mardin, 1975, pp. 28-29).

The general elections held on May 14, 1950, therefore, is said to be regarded "as a watershed in the political history of the Turkish republic for signifying the end of a one-party rule" and "celebrated retrospectively as the victory of the periphery over the tyranny of the center, rejecting the tradition of the reforms from above in favor of the rule of the market" (Yalman, 2002, p. 32). However, the two main proponents of the "statist paradigm" are not necessarily clear on the point that the 1950 elections was a victory for the periphery, as both Mardin (1975, p. 29) and Heper

(1985, pp. 105-106) argue that the Democrat Party was not necessarily representative of the periphery. Heper even uses as quotation by Karpat noting, as Yalman does, but by no means with the same conceptual tools, that the transition to the multi-party system was another attempt for "passive revolution", which is a Gramscian term denoting the coming to power of a new political formation without a fundamental reordering of social relations or change in the balance of class forces:

> Many who had enthusiastically backed the one-party regime and searched for spoils there, now turned to support the multi-party system with the same selfish motives as before. They spoke for democracy in the vehement, and uncompromising tone of the one-party days, but as though the mere purpose of the struggle was to change 'the title "one-party regime" to a "multi-party", shift the people at the head, and keep the rest intact (Karpat quoted in Heper, 1985, p. 106).

Nevertheless, the line of thinking which associated the Democrat Party's success in the 1950 elections as that of the periphery against the center, or economic and political liberalization against an etatist economy and the bureaucratic elite, became a vital piece of the dichotomy narrative. This is accepted, for instance, with much less reluctance by Akarlı, who noted that new interest groups had emerged in Turkish society who were actually beneficiaries of the modest socio-economic development in the early decades of the Republic, including professionals, businessmen, capitalist landlords, and cashcrop producing peasants, and that the Democrat Party's conclusive victory was based on the support of these groups (Akarlı, 1975, p. 146). Yerasimos states that the basis of the Republic was the creation of a nation (as an extension of Ottoman absolutism) instead of a society which created its own administrative apparatus. This is said to be the result of the paranoia felt towards religious communities and the resulting top-down imposition of rule due to the necessity felt to forfeit democracy. Democracy, according to this view, was imposed in the same top-down fashion as a necessity of westernization, which implies that westernization was the result of the state’s bid for survival. Thus the 1950 election was seen as having emancipated the private sector from the state (Yerasimos, 2001, p. 17).

3.3. The mutation and cure of civil society in Turkey

The reason for this somewhat extended introduction of the factors said to be involved in creating a dichotomy between the state and society in a unique fashion in the Republic of Turkey is to highlight several characteristics of the dichotomy narrative, including: the ***irreparable*** divide that is said to have been inherited from the Ottoman Empire by the Republic of Turkey between the state bureaucratic elite and the periphery, and the reason for this unbridgeable divide, namely the lack of an autonomous civil society and more particularly an autonomous and powerful bourgeoisie. Academicians and activists writing on the issue of civil society in Turkey continuously connect the weakness of civil society as the fundamental reason for the lack of democracy or failure of democratization efforts in the country, and according to Kalaycıoğlu, although many reasons were given (such as the economy, the constitution, coalition governments, etc.) by students of Turkish political history regarding this matter: "By the 1980s a more accurate description seemed to be arising. It was argued that civil society was too weak to sustain a democratic form of competition" (Kalaycıoğlu, 2002b, p. 59). It is not a coincidence, then, that it was during this time that Mardin and Heper wrote and elaborated their dichotomous narrative and their "continuity thesis". This "more accurate description seemed to be arising" because an important group of historians were building a very strong narrative by reifying the state as a "center" inhibiting the development of a glorified ideal-type civil society, which would have been a medium of "norms of rationality, moderation, and compromise", as well as a barrier to the drifting of "Turkish politics to extreme instrumentalism, or to a debilitating pluralism" (Heper, 1985, p. 101). Certain weak points of the narrative and caveats placed by the historians themselves will be elaborated below with the view of promoting a more relational view, but at this point it is important to note how this narrative affected the way in which the development of civil society is periodized by academicians and civil society advocates.

The view that civil society only “really” came into existence in Turkey following the coup is based on a liberal-prescriptive definition of civil society, the proponents

of which have been vocal in depicting and defining civil society as a sphere of voluntary relations unimpeded by the coercive forces of the state and the profit motive of the market, an area of human relations underlining the importance of shared objectives and voluntary efforts by individuals coming together to reach these objectives: “Still it is possible to plausibly define the concept in its most general form. In this respect civil society expresses that which is outside the state and autonomous from it. It is the self-regulation of society via voluntary organizations.” (Üsterci, 2001, p. 406).

Civil society in Turkey is depicted as a mutation brought on by the unique circumstances in Turkey. For example, talking about the definition of civil society used by a large number of organizations they interviewed, Keyman and İçduygu express surprise at the institutional distinction between the state and society being seen as a sufficient condition for the existence of civil society. Instead, they put forward what they call "two important criteria" to be termed as civil society organizations: that CSOs be issue-specific organizations, and that they do not create or support ideological societal visions. Using this very liberal-prescriptive and depoliticized definition, they go on to state that such a civil society does not exist in Turkey:

> When we approach civil society organizations in Turkey on the basis of these two definitional criteria, we see that most of them act on the contrary, that is, their activities are not issue-based in scope and content; instead they are embedded in big societal visions. First of all, there are civil society organizations whose activities are framed, to a large extent, by big societal visions, such as, Kemalism, a modern Turkey, the protection of contemporary civilized life, the secular-democratic Turkey or Islamic order, Islamic life, a socialist Turkey, and Kemalist Woman, to name a few. Second, we see that while civil society organizations institutionally take place outside the state, they can have strong normative and ideological ties with state power (Keyman and İçduygu, 2003, pp. 227-228).

Such "normatively loaded discourses and strategies", it is said, is the result of the republican model of citizenship, which is said to rest on a civic-republican understanding in which duty takes precedence over rights, where citizens in Turkey are militantly active in serving the making of modern Turkey, and place the public

good before their individual interest or freedom. The Kemalist Republican ideology is said to have "tried to carefully construct the modern concept of citizenship with its own peculiar characteristics" (Keyman and İçduygu, 2003, p. 231).

The expectation brought on by a failure to question the liberal-prescriptive view of civil society that civil society should not be involved in politics informs the periodization of the development of civil society by many academicians and activists. In effect, it can be said that the liberal-prescriptive view ***requires and necessitates*** a periodization, that is, a timeline of the development of civil society (read as the democratization of Turkey) as seen and measured through the yardstick of this definition. Such a definitional yardstick provides a compass which allows for easy periodization. Çalı, for instance, outlines the way in which the 1961 Constitution enabled the expression of demands of social equality through its progressive rights framework, but that the late 1960s and 1970s saw the Turkish political scene occupied by grand political narratives based on class politics, and that civil society was merely instrumentalized by the left: "The Dominant understanding of 'human rights' by the Turkish left regarded this concept as an instrument for the advancement of class struggle; they were skeptical about a human rights discourse that was not based on class politics" (2007, p. 220). Following an account of the establishment of a "strange Turkish style civil society" as a result of social engineering efforts by state elites in the formative years of the Republic that consisted of creating "institutions, classes and legal regulations" as well as voluntary organizations acting as "public relations bureaus" to convey, unilaterally, their ideal of "Westernization" to an increasingly estranged public, Üsterci goes on to note the existence of a similar instrumentalist outlook towards civil society by the left:

> The left's move towards civil society starts, in a way, with the '68 movement. Various social classes and layers obtained a relative autonomy vis-à-vis the state following rapid organization under the influence of left-wing ideas and currents that had been strengthened by the '68 protests. Many trade unions, professional organizations and associations changed hands and became truly civilianized, while many new ones were founded. Despite this positive and hope-lifting development for society, a strong

> civil society did not form and the destiny of civil society organizations did not change. Due to the instrumentalist approach of the strengthening left movement, civil society organizations were once again forced to take on the role of "public relations". Civil society organizations became areas in which left-wing groups presented a show of force for their political existence, as well as tools with which left wing policies were conveyed to society and which provided pools for recruiting cadres. In the wake of the '80 coup, as a result of the difficulties of engaging in politics on the one hand, and the recognition of "new social movements" developing in the West on the other, the left's interest in the concept and organizations of civil society increased even further. However this time the desire was to substitute political activity in place of the work undertaken within civil society organizations as a whole. (Üsterci, 2001, p. 407).

Thus, narratives of the development of civil society in Turkey typically portray the strategy of the state as a constant, namely as self-preservation through social engineering and oppressive action, while depicting civil society as a democratizing actor so long as it stands true to purist liberal definitions regarding complete autonomy from the state and voluntary membership, and as long as its operational arms (CSOs) are not hijacked by ideological/political movements.

A thorough study on the make-up of civil society has been conducted by a joint initiative of the Third Sector Foundation of Turkey (Türkiye Üçüncü Sektör Vakfı – TÜSEV) and the World Alliance for Citizen Participation (CIVICUS) in 2006 entitled "Civil Society in Turkey: A Process of Change – International Civil Society Index Project; Country Report Turkey". Analyzing a wide range of topics in and aspects of civil society categorized under the four subheadings of "Structure", "Environment", "Values" and "Efficiency", the self-professed goal of the study is said to be to transcend the form of an academic project and to bring together numerous and various civil society constituents (a direct translation of the Turkish word used here –paydaş- would be "shareholder/stakeholder"), to act as a catalyst in debates related to civil society and to give direction to civil society that may be useful in the future. Accordingly the International Civil Society Index Project (Sivil Toplum Endeksi Projesi – STEP) is said to be an action-oriented research project (STEP, 2006, p. 29).

Having set out its normative basis in the beginning of the research paper, the study aims at mapping the history of civil society in Turkey, which it proceeds to do in a two-tier fashion, in accordance with two separate definitions of civil society. The first of these is the broad definition, namely "organized life outside of the political arena", which corresponds to a long history in Turkey, as the importance of non-state organizations and organized life in Turkey's history of modernization and democratization extends to the late-Ottoman period, from the year 1850 to 1917. An example given to such non-state organizations is that of the foundations, which were built as charity giving organizations, and which are still organized around the same principles today. The first years of the Republic as a modern independent nation-state also saw the importance of organized life, but one which was organically tied to the state with regard to efforts of creating a modern nation. Following the transition to a multi-party democratic regime, organized life has continued its existence, and since 1980 increasingly gained a quantitative and qualitative importance, while in the process transforming from a national organization and action type to a regional and global type (STEP, 2006, p. 36). However, as regards the second definition of civil society, namely that which defines civil society as an autonomous sphere outside both state and the economy that is voluntarily constituted and aiming at participation and democratization, STEP argues that the history of civil society has been short. In fact, STEP starts this alternative history from 1980 onwards, with a special emphasis on the acceleration achieved following the year 2000 with the help of reforms undertaken in the context of EU accession talks.

Once again, we are catapulted, with great accuracy, into the realm of the dichotomy narrative, as the study states that the duality of civil society being both old and new, is the effect of the state-structured and state-centric modernization process on civil society in Turkey. Such state-centric and top-down modernization has revolved around the idea of the unity of state and society, with the aim of organizing social relations around citizens serving the state interest rather than around social relations structured around the individual or class:

> For this reason, society in Turkey is composed of citizens who do not define themselves on the basis of individual freedoms or class differences, but rather on the basis of duties to the state understood as "giving service to the modernization of the state politically, economically and culturally (STEP, 2006, pp. 36-37).

We are told that the consequence of such an understanding is two-fold. On the one hand, the state aids in the creation and supports those organizations that are in line with modernization, while it constitutes the main obstacle in front of the development of organizational life that does not correspond to its agenda. A political culture based on participation is thus impeded, as was the case in the period of 1945-1980. During this period, three military coups were experienced (1960 -1971 -1980) which set back the clock of democracy in favor of an ideology of security. The most interesting point made here is the statement that the military coups "have functioned to strengthen the state in Turkey against society" (STEP, 2006, p. 37). This is a pristine example of the state-society approach chosen by civil society advocates in Turkey. No open door is left for the possibility that the coups actually helped certain sections of society more than others (which indeed was the case as will be shown below). Moreover, such a view sets the study up for explaining the above-mentioned qualitative break civil society allegedly experienced following the military coup of 1980, for we are told that the development of civil society in Turkey following this date was tied to a series of historical changes and transformations which has led to the weakening of the state's power over social life. These were a shift to a free market export-based industrialization, religious and ethnic demands which appeared in political and cultural life (the wording does indeed imply a sudden appearance) and the start of the globalization process. These were "factors which affected the development of civil society outside state control" (STEP, 2006, p. 37). So following the 1980 coup, conditions were ripe for the strengthening of society vis-à-vis the state, marking a qualitative break. In terms of what the most important factor was that actually made this possible, however, the Report points to the free market:

> The organization of economic life on the basis of the free market, while being exposed to serious criticism concerning the state's intervention in the

> economy as a strong economic actor, enabled the rise of a new liberal discourse revolving around entrepreneurship, individualism, individual freedoms and rights. The decrease in size of the state and the strengthening of the individual in this area, has infused neoliberalism, which functions with the formula of "free market + individual = democracy" into the modernization process in the post-1980 Turkey. In addition, the criticism made towards the strong state tradition by the free market and individualism, has allowed society to develop vis-à-vis the state. The relationship between civil society and democratization has been emphasized during this period, and the liberalization of economic life has been seen as an important dimension of this relationship (STEP, 2006, pp. 37-38).

The reasons provided by the STEP report regarding the qualitative and quantitative development of civil society following the 1980 coup is echoed by a wide range of academicians. Keyman and İçduygu (2003), for instance, put forward what they call four "processes" explaining this change, the first two of which concerns internal reasons, while the last two reasons are external in origin. A critical evaluation of these arguments is important in order to form a framework with which to summarize the arguments presented to explain the so-called unprecedented growth of associational life following the coup.

The internal reasons for the growth of civil society following the coup are what is labeled as "the changing meaning of modernity" and the "legitimacy crisis of the strong-state tradition". The first of these is said to underline the emergence of a critique of the equation of modernity in Turkey with "secular-rational thinking", the increasing prominence of other views on the matter such as the Islamic discourse, and "the emergence of the language of civil society, civil rights, and democratization" due to the increasing calls for the need to think of modernity in terms of democracy (Keyman and İçduygu, 2003, pp. 222-223). The second internal process is said to have come about due to loss in legitimacy of the "strong-state tradition", characterized (as is detailed above) by the state's capacity to act "almost completely independent from civil society" and the state constituting "the primary context of politics" rather than the government. The crisis in the legitimacy of the strong state is said to have come about through the emergence of "new actors, new

mentalities, and the new language of modernizations, as well as democracy as a global point of reference in politics" (Keyman and İçduygu, 2003, p. 223).

It seems as though the internal reasons provided by Keyman and İçduygu are overlapping ones which confuse the causes with the results. First of all, a clearer argument would be that the second reason, that is, the legitimacy crisis of the strong-state tradition, was an important element in the emergence of the different discourses on modernity. The two reasons can even be collapsed into one. The problem is, however, that Keyman and İçduygu never really explain how it was that new actors with different discourses who could question the strong state tradition came about, and instead present these happenings (the crisis of the strong state tradition and the changing meaning of modernity) as *explanan* (that which explains) rather than *explanandum* (that which is explained). Instead, the authors note that these two processes can be understood through the next two processes in their list, namely the European Union membership process and "the process of globalization". While both these external factors are labeled as "processes", both are used as explanans for the shift in civil society development in Turkey, although both require, in my view, to be seen as explanandum's on their own. Moreover, exactly why and how these processes affected internal policies in Turkey only after the 1980 coup is not explained. In any case, their argument is stated succinctly as follows:

> In Turkey, the crisis of the strong-state tradition and the impacts of globalization have together contributed to the significant qualitative and quantitative increase in civil society organizations during the 1990s. Civil society organizations have been considered (a) an 'indispensable element' of the process of democratization; (b) a 'necessary' factor to create stability in the relations between Turkey and the European Union; and (c) an 'important element' of the modernization and the liberalization of the Turkish state, so that it transforms itself into a political organization whose power and activities are 'accountable' to society (Keyman and İçduygu, 2003, pp. 226-227).

A better argument is presented by Binnaz Toprak, who states that one of the major reasons for the importance of the concept of civil society in the new political discourse was the reaction to the repeated involvement of the military in politics:

"Paradoxically, the coup which set out to destroy the institutions of civil society helped to strengthen the commitment to civilian politics, consensus-building, civil rights and issue-oriented associational activity" (1996, p. 95). Yet Toprak does not leave her argument there, in which case it would have had the same effect of Keyman and İçduygu's argument, that is, not really explaining why it was this coup had paradoxically strengthened a commitment to civilian politics while the previous coup had not done so, or why a consensus on democracy formed after 1980 rather than before. Toprak notes that the discovery of civil society as an important concept actually came about from within the ranks of the Turkish Left, who, in the 1970s, became disillusioned with the Soviet Union and increasingly saw it as a repressive state mechanism of the party bureaucracy. It was only after 1990 that they became part of the consensus, however:

> With the dissolution of the Soviet Union and other communist regimes in Eastern Europe, the understanding that a strong state with a command economy neither provides material wealth nor freedom for its citizens came to dominate political discourse. The interest was towards building institutional mechanisms to contain state power and to open the political space for civic association (Toprak, 1996, pp. 95-96).

Başak Çalı provides yet another aspect to the same story, in underlining that the 1980 coup was a turning point in the development of a domestic human rights discourse, as evidenced by the establishment of the Human Rights Association (İnsan Hakları Derneği - İHD) in 1986, as a practical response to the mass detention, torture and disappearance of left wingers under the military regime. These prompted left wing groups to join forces within the auspices of the IHD: "Within this repressive political structure, human rights discourse emerged as one of the few available ways of criticizing and resisting the state violence" (2007, p. 222).

Literature on the growth of civil society in Turkey explains the years following the 1980 coup as a first step towards a more liberal understanding of civil society advocacy, albeit realized as a result of the pragmatic choice to use civil society as an area of subtle political activity so as to circumvent state oppression, especially

towards the left. Plagemann (2001, p. 364), for instance, notes how the Human Rights Association was almost the sole legal organization for radical leftists coming from various political standpoints, acting as a pool for activists during a time and context in which the room to maneuver for any political movement was very restricted. Together with Amnesty International and the Solidarity Association for Families of Prisoners (*Tutuklu Hükümlü Aileleri Dayanışma Derneği-TAYAD*), human rights organizations were created in order to protest against prison conditions and torture (especially in support of left-wing activists who were imprisoned by the state following the coup). Even in this narrow advocacy area, all three organizations had diverging views on the scope of the amnesty demanded, while right wing activists also founded organizations such as the Social Security and Education Foundation (*Sosyal Güvenlik ve Eğitim Vakfı-SOGEV*), which had hitherto refused to cooperate with pre-1980 human rights initiatives on grounds that they were conducting communist propaganda, and which based its "human rights advocacy" on grounds that they had been wronged by the state due to their unwavering ideological support for the state, therefore in part resting on an understanding that "the wrong people were tortured" (Plagemann, 2001, pp. 363-366).

The second phase for the shift from ideological political activism to voicing demands through CSOs within civil society is explained through a more normative approach. According to this explanation, following the 1983 general elections and the return back to civil rule, the relationship of the state and civil society was put under scrutiny and the conclusion was that a civil society which could protect the individual against state power did not exist in Turkey, and civil society was equated with democracy in such a way that the word "civil" took on the meaning of an opposition to "military" rule, thus becoming a rallying point for advocates of civil society (Sarıbay, 1992, p. 112).

The search for a new and less violent type of politics which centered on the concept of civil society paved the way for the establishment of a common ground among different political views in the form of the creation of a "post-political discourse" in

the ‘90s, the variations of which can be listed as Second Republicanism, an Islamic civil society project and post-liberalism (Erdoğan & Üstüner, 2005, p. 658). Essentially neoliberal, Islamist and Left formulations of peaceful coexistence, all three perspectives of this post-political discourse criticized “obsolete ideological passions” (Erdoğan & Üstüner, 2005, p. 658), and rested on a dichotomous understanding of state-civil society relations, which painted a static view of state-society relations throughout history as one of opposition. The post-political discourse, in all its manifestations (neoliberal, Islamic, Left) argued that civil society was a bastion of democracy waiting to be freed from the iron grip of the Turkish state. Reducing politics to the act of acknowledging and understanding differences and creating islands protected by the principle of non-interference, the post-political discourse viewed civil society as an inherently democratic sphere.

As for the external causes of the development of civil society in Turkey, the country's candidacy to the European Union and the resulting conditions placed in front of it regarding the civil society sphere, along with the more general explanation of "globalization" stand out as two of the most common explanations. Çalı (2007) and Toprak (1996) both underline the importance of Turkey's ***instrumental*** participation in international human rights regimes due to its calculation that such participation would serve to strengthen alliances with the Western world in the 1980s and how this inadvertently paved the way for the use of international instruments and discourse:

> Most significantly, Turkey's entry to the jurisdiction of the European Court of Human Rights in 1987, allowed the articulation of the state oppression and violence within the medium of international human rights law and language. The human rights language has not only enabled international alliances, but also legitimized the IHD and unified its otherwise politically fractured membership (Çalı, 2007, p. 222).

The growth and diversification of CSOs in Turkey is credited to Turkey's accession process to the European Union. Göksel and Güneş, for instance contend that following Turkey's attainment of a "candidate" status at the EU Helsinki Summit held in December 1999 and the roadmap presented to Turkey for reforms across a

very wide range of issue areas, the EU provided for "clear and measurable benchmarking" which enabled public mobilization and "pressure on the politicians to carry out the overdue reforms which prevent populism and dictate good governance" (2005, p. 58). Backed by wide public support from the Turkish people, advocacy on the issues such as the lifting of the death penalty and the lifting of restrictions towards ethnic minorities is said to have been facilitated. The EU process is also credited with providing pressure through its Commission Progress Reports to push Turkey into stepping up its efforts in reforming the Law on Associations, which included such reforms as easing procedural restrictions for international organizations to open offices in Turkey, extending the allowed activities for associations and cutting down bureaucracy for the establishment of associations (Göksel & Güneş, 2005, p. 64). EU support has also extended to assisting CSOs financially, and training them in project design and implementation, fundraising, etc (Göksel & Güneş, 2005, p. 66).

Seçkinelgin (2004) also credits the EU with the increasing diversity of the Turkish advocacy field. He upholds that a new type of civil society has emerged in Turkey (due to globalization and the EU accession process) in the 1990s and that the new CSOs have been able to bring different issues to the political agenda as a result of their less formalized structures:

> In this, several other factors are important – both the impact of the concept's global resurgence and of organizational forms and the Turkish aspiration to become a member of the European Union have brought about a certain change. The number of non-governmental organizations (NGOs) has increased, and their areas of interest have diversified: from various women's issues to the environment, from gay and lesbian rights to homelessness, from language rights to ethnic groups to prison-reform associations. In other words, the civil society scene is becoming less formalized, and as a result is becoming more diffused than is possible within the more bureaucratic structures characteristic of traditional organizations (Seçkinelgin, 2004, p. 174).

3.4. Similar Periodization of the Women's Movement

A good example of how this narrative regarding the development of civil society in general and CSOs in particular is applied to specific issue areas can be seen by the way in which the growth of the women's movement is described by scholars. The most important components of this description include the major points presented by the "mutation of civil society and cure after the 1980 coup" thesis. The development of women's rights advocacy in Turkey is said to have been instrumentalized throughout the late Ottoman period up until the 1980s, by patriarchal bureaucrats who used women's rights to legitimize their own worldviews, by the Kemalist elite who during the single party years used the issue of women's rights to promote a self-contradictory "state feminism" and by the left, which, during the most traumatic years of industrialization in Turkey attempted to assimilate the women's movement to a class warfare discourse. Such instrumentalization is said to have inhibited the growth of an autonomous women's movement, which has only started to emerge in the last few decades due to the conditions being favorable for a vibrant internal women's rights movement and external pressures from the EU.

Scholars of the development of feminism in Turkey's history trace the beginning of the women's rights movement to the Tanzimat period (Tekeli, 1981, 1990; Arat, 1998). A sharp contrast is made with the way in which the women's emancipation movement developed in the West, where women "struggled fiercely for their emancipation and political rights" in the context of class struggles in 1789, 1848, 1870 and 1917 (Tekeli, 1981, p. 293). The Ottoman Empire, however, was a pre-capitalist social formation, and therefore was not stage to class struggles to which women's rights could be articulated as in the West. Rather, its transformation into a theocratic state in the 16th century saw the interpretation of the Muslim religion by the Palace and the "ulema" "in such a way as to justify the complete exclusion of women from social and economic life" (Tekeli, 1981, p. 295). Therefore, it was not until the Tanzimant period that women were given limited rights, and then only because the "Westernized" intellectuals and "modernized bureaucrats" of the

Ottoman Empire drew a link between backwardness and women's situation in the Empire (Tekeli, 1981, p. 295). The issue of women's place in Ottoman society was brought forth, therefore, by men from the Ottoman elite who used the issue as an instrument to make their case in favor of modernization. Thus, male reformers of the Tanzimat period, "found the plight of women a powerful vehicle for the expression of their own restiveness with social conventions they found particularly stultifying and archaic", and while dedicating themselves to a modernist Islamic perspective suggested that changes in women's conditions would benefit society as a whole (Kandiyoti, 1991, p. 26). The limited progress as regards women's rights of inheritance, the right of education of girls beyond primary school, the creation of educational programs and new schools, the opening of teachers' schools, and the first university for girls (Arat, 1998a, p. 7; Tekeli, 1981, p. 295). The emphasis on promoting education for women is also seen to have taken place with an instrumentalist rationale, as "in order to improve both the quality and quantity of labor in various areas, the state introduced educational programs and opened new schools for girls" (Arat, 1998a, p. 7).

It was only after 1908, the year in which a constitutional monarchy was established, however, that women's lives began to change, especially in terms of women gaining access to the public sphere as "professionals, writers, and activists", along with the creation of and membership to various associations "with objectives ranging from performing general charity work to educating and training women for work, to helping defend the country by supporting soldiers in the fronts, to promoting women's rights" (Arat, 1998a, p. 8). These associations, as well as women's magazines which started being published at or around the same time, mainly focused on demanding the end of polygamy and limitations on the right to divorce, and not winning political rights *per se* (Tekeli, 1990, p. 269).

Although women were drawn into the workforce in unprecedented numbers during the First World War and the War of Independence due to a serious shortage in the labor force, this had little effect in creating an independent women's movement, as during the Second Constitutional Period "debates on women and the family became

more tightly and self-consciously integrated into ideological positions representing different recipes for salvaging the floundering empire" (Kandiyoti, 1991, p. 32). These included Islamists who argued for the unadulterated application of Shari'ah law, the "Westernists", who "held Islam responsible for both obscurantism and what they saw as the debased condition of women", and the Turkists who adopted a view of the equality of men and women based on a revisionist historical account of the traditional values of the Turkic people before Islam (Kandiyoti, 1991, pp. 32-35). The "new family model" adopted, however, aimed to extend state control and intervention into the private realm of the family, and initiate a social revolution in which the nuclear and monogamous family would stand as a symbolic pillar against the Ottoman patriarchal family (Kandiyoti, 1991, p. 36). Yet this attempt was met with serious opposition, evidenced by the compromises seen in the 1917 Family Code which, for instance, while decreeing marriages without consent as illegal, legalized polygamy (Kandiyoti, 1991, p. 36).

Although women organized among themselves in the War of Independence in such groups as the "Anatolian Women's Association for Patriotic Defense" and the role of Anatolian women in aiding the war effort was praised and glorified in patriotic rhetoric, serious opposition to women's rights and equality was voiced by conservative forces who had rallied behind Mustafa Kemal Ataturk's nationalist forces, and who held a majority in the First National Assembly, thereby effectively blocking attempts to give women equal citizenship rights (Kandiyoti, 1991, pp. 37-38). Resistance to women's rights continued following the 1923 elections and the Second Assembly, to which was presented the draft Family Law in 1923 which was actually more regressive than the 1917 Code in its endorsement of polygamy and elimination of the need for the consent of the first wife, and lowering the legal age for marriage for girls to nine years. The conservative opposition was only crushed following the abolition of the Caliphate on March 3, 1924 and the abrogation of Shari'ah law in favor of secular law (Kandiyoti, 1991, p. 38).

As the revolutionary minority around Mustafa Kemal was in constant ideological loggerheads in the First and Second National Assemblies with the majority of

conservatives who had aided Mustafa Kemal in his efforts to create an independent state but who advocated for the survival of the old Ottoman system, the former group frequently used the issue of women's rights as an ideological weapon against the "hegemony of the religious authorities" (Tekeli, 1981, p. 297). It was in this context that the Kemalist modernization/Westernization project placed great emphasis on education in general and the education of women in particular, adopting a free education policy at all levels, and making primary school education mandatory for both sexes in 1923 (Arat, 1998a, p. 15). Education was seen both as a precondition for economic development, and "as the most effective way of transforming the Ottoman subjects into 'nationalist' citizens with modern and secular minds" (Arat, 1998b, p. 158). Desegregation was pursued, albeit only incrementally, as the first desegregated schools were established at the primary and university levels in 1924, while middle schools integrated in 1927-28, and high schools in 1934-35 (Arat, 1998b, p. 159).

Reforms also targeted the structure of the family, as in the adoption of the Civil Law in 1926, which abolished polygamy, imposing a minimum age for marriage, equality to women in inheriting and maintaining property, initiate divorce and hold custody over children (Arat, 1998a, p. 15; Acar & Altunok, 2012, pp. 34-35). Although the new Civil Law "accorded Turkish women a truly progressive status at the time" (Acar & Altunok, 2012, p. 35), scholars note that it assured the continuing dependence of women to men by legally recognizing the husband as the head of the household, and obligating the wife to seek the husband's permission to work outside the home (Arat, 1998a, pp. 23-24; Tekeli, 1981, p. 297). Some critics give this as an example to the way in which "The Republican regime wanted to mobilize women, but only under state leadership and only to the point that was permissible by men" (Arat, 1998a, p. 23).

This is why the reforms did not mean that the women's movement gained immediate state support. While Nezihe Muhiddin and her associates (including Halide Edib) campaigned for the rights of women to be active in public life (specifically regarding electoral rights) and established the Woman's Union (Kadin

Birligi) on 7 February 1924, efforts of these leading activists of the time were not supported by the government nor the RPP. and their offices were searched and documents confiscated (Ecevit, 2007, p. 189). It was only following Mustafa Kemal's efforts that women's rights to participate in municipal elections was initiated and which led to the amendment of the municipal Law on 3 May 1930 to this effect. Tekeli (1981, p. 298) states that Ataturk may have believed that women's enfranchisement was proof of the "democratization" of the regime, thereby rejecting allegations of being a "dictator" from both within and from abroad, also at a time when the Nazi regime was secluding women from political life. The Woman's Union was increasingly coopted by the state and Nezihe Muhiddin was silenced. Full electoral rights were given to women on 5 December 1931 only after being debated and accepted by Mustafa Kemal's inner circle (Ecevit, 2007, p. 190). The Women's Union even disbanded on its own in 1935, having allegedly obtained its goal (Ecevit, 2007, p. 190). Tekeli also brings her argument to bear on Ataturk's encouragement of women to participate as candidates in the 1935 elections as part of the endeavor to use the symbolic role of women's political rights "as a valuable strategic instrument to reach certain goals which were crucial for the image of the new regime" (Tekeli, 1981, p. 299). The argument is echoed by Arat who states:

> Increasing women's presence and visibility in the public sphere was sought both as a way of overcoming backward practices and also to show how 'modern' the new Turkey had become. Arguably to serve the same purposes, women were granted political rights in the 1930s - the right to vote and to run in municipal elections in 1930, and in national elections in 1934 (Arat, 1998a, p. 15).

The formative years of the Republic is fascinating when taking into consideration the activism of women for civil and political rights. However, some scholars argue that the women's movement was merely instrumentalized for the ideals of Westernization and modernization advocated by the Kemalist elite, which in effect, is said to have inhibited the growth of an independent women's movement:

> The way these 'reforms from above' were passed down to liberate women from an Islamic order based on patriarchal norms has remained significant

> in defining women's relationship to the state and to society. The reforms (exceeding what women themselves were asking) brought a paradoxical liberation on the prospect of freedom without making it necessary for women themselves to do anything to remove obstacles which would continue to exist…That is why many women who founded societies for women's rights identified feminism with Kemalism and their demands did not extend beyond those already accorded by state feminist…Thus, Republican ideology which had replaced Islam as the official view of the world, acted as a screen which prevented this handful of educated women from perceiving the situation beyond their own orbit and from working to better the position of women in general (Tekeli, 1990, pp. 270-271).

This view is shared by other feminist scholars:

> Women's emancipation under Kemalism was part of a broader political project of nation-building and secularization. It was a central component of both the liquidation of the "theocratic remnants" of the Ottoman state and of the establishment of a republican notion of citizenship. It was also the product of a Western cultural orientation, which despite its anti-imperialist rhetoric, inscribed Kemalism within an Enlightenment perspective of progress and civilization. However, the authoritarian nature of the single-party state and its attempt to harness the 'new woman' to the creation and reproduction of a uniform citizenry aborted the possibility for autonomous women's movements (Kandiyoti, 1991, p. 43).

A parenthesis must be opened here to note that such accounts make no mention of the possibility that such "state feminism", even if its sole goal was to coopt and pacify the women's movement (which remains arguable), may have laid the ground for the legitimacy of women's rights advocacy in a very conservative public opinion. For instance, Zehra Arat notes that the education policy of the single-party period was based on a gendered curricula, that it encouraged vocational specialization and that it attempted to "restrict female students' mobility and femininity" (Arat, 1998a, p. 16). Nevertheless, out of the 30 women interviewed in 1993 aged 62 to 90 with firsthand experience of the era, all rejected the notion that there had been any discrimination because of sex (Arat, 1998a, p. 18; Arat, 1998b, pp. 172-173). Arat then goes on to note the following:

> Nevertheless, it should be noted that the perceptions of these women were based on their experiences, their experiences (which might have included indoctrination) marked their 'reality,' and, most importantly, it was that reality that they transmitted to the next generations (Arat, 1998a, p. 17).

Following what Ecevit calls a "period of stagnation" between the years 1940-1960 in which a new identity was assigned to women as guardians of the reforms, modernization and enlightenment, and which curiously saw the proliferation of women's organizations (albeit apolitical ones comprised of educated upper middle or upper class women), the 1960's to the 1980's saw what is called the "restless years" (2007, p. 192). The 1961 constitution, with its liberal provisions regarding individual rights and its recognition of labor rights, is said to have engendered a new era of freedom allowing the creation of a pluralist political environment in which various ideological groups emerged (Arat, 1998a, p. 17). Such groups challenged the "state's ability to maintain a monolithic ideology and monopoly over political mobilization" (Arat, 1998a, p. 17). This created a "harsh political environment", however, and one which "allowed little quarter to the passive and symbolic role which women had acquired" (Tekeli, 1990, p. 271). The fall in the number of women candidates to and representatives in the National Assembly during the 1960s and 1970s, their low rates of membership in political parties along with their lack of interest in electoral politics is said to have highlighted "the failure of Kemalist legalistic reforms to achieve practical political equality between the sexes" (Tekeli, 1990, p. 273). In addition, during a time of rapid industrialization and internal migration to cities, women's associations are said to have been linked to political parties or to ideological groups, especially in connection with the Left, which reduced women's rights into a subissue within the larger issue of capitalist exploitation, and "whose image of equally victimized men and women comrades reduced the feminist cause to bourgeois plots to divide the working-class movement" (Toprak, 1996, p. 116). This is best described by Fatmagül Berktay, who states that prior to the 1980 coup, there was no "women's question" to talk of in the Left's agenda, and that it was generally viewed as being subordinate to issues of class and revolution (Berktay, 1995, p. 313). Women were typically kept out of decision-making mechanisms within Left wing organizations, and were seen to be more prone to "enbourgeoisment" (Berktay, 1995, pp. 314-315). Furthermore, Berktay argues that a moralistic attitude towards women was also prevalent during these years in leftist organizations, with men in these organizations frequently

identifying their women comrades as “sisters”, thereby suppressing the sexuality and individuality of women (Berktay, 1995, p. 316). The “revolutionary” is said to have been defined in this period as “moralistic”, and leftist organizations frequently showed themselves to be intolerant towards homosexuality and sexual freedom (Berktay, 1995, p. 316). Such exclusion from important positions in these organizations in which ideologies and strategies were formulated, and their general suppression within the leftist movement, meant that

> women who participated in leftist movements in Turkey did not think to analyze the myriad ways in which they were being oppressed nor were they aware of their relegation and were thus not in a position to evolve a feminist approach (Tekeli, 1990, pp. 274-275).

Once again, an important parenthesis needs to be opened here. Just as the Republican state feminism laid the ground for the legitimacy of women's rights advocacy for the future, the extent to which the labor movement and the experience of leftist organization and advocacy efforts contributed to the creation of intrepid activist women should also be considered. Arat notes, for instance, that while the political groups at the time did not focus on women’s issues and rights, that they politicized women and that,

> despite their disregard for gender equality, as they postponed the emancipation of women or subsumed it within some other “primary” goal, the emergence of new groups and the increased political competitiveness caused women’s political participation and activism to increase (Arat, 1998a, p. 18).

Yet it was only after 1980 that a truly "autonomous women's movement" arose:

> The scope and strength of women's movement in the post-1980s period cannot be compared with women's activism in previous periods. The new women's movement has all the hallmarks of feminist thinking and developed as an independent and autonomous movement (Ecevit, 2007, p. 195).

The way in which this “independent and autonomous movement” developed, however, was ironic. There were, at this point, two actors from which the women’s movement in Turkey needed to be independent from to become an autonomous

movement, namely the state and leftist organizations, both of which subsumed and manipulated the issue to their own ends, inhibiting its growth as an independent movement. The 1980 military coup, with its aim to "virtually abolish politics as an expression of social relations", is said to have indirectly caused the necessary depoliticized environment for this to occur (Tekeli, 1990, p. 262). This was done in brutal fashion, with the majority of torture and oppression dealt against the left. Trade unions, political organizations and parties of the left were shut down. This environment of political repression, according to Tekeli, created a platform to redefine old political concepts and introduce new ones:

> The 1980 military regime razed much, but in so doing cleared the way for the redefinition of basic concepts necessary to the formation of social consensus. These concepts became of key importance in the discussion of democratization in Turkey in general and of the women's movement in particular. Although consensus over these concepts remains elusive, one has only to compare present debates with the polarization of left and right before the 1980s. Then, even the most primitive of dialogues was impossible. The terms which seem to me to bear most relevance for the women's movement are 'democracy', 'civil society', 'the individual', 'anti-militarism' and 'anti-authoritarianism'. My understanding of the women's movement is that the commitment to liberate women from patriarchal social structures carries with it an orientation not only to change but to change within the recesses of civil society. This contrasts to state feminism in Turkey, a product of the single-party era… (Tekeli, 1990, p. 264).

It is argued that whereas democracy was considered merely an means to an end prior to the 1980 coup, it became the objective itself following 1980, especially as the left and right opposition unified in anti-militarism, which led to a common stand against state authoritarianism, and the experience "tutored the importance of the concept of civil society" (Tekeli, 1990, p. 266). Similarly, the coup destroyed the second actor responsible for the inhibition of the women's movement, namely the authoritarian left:

> Just as the political aftermath of the 1980 coup produced the paradox of clarifying the constraining and authoritarian quality of the state, a similar paradox attached itself to the perception of the hegemonic left. This state-oriented, authoritarian and anti-democratic left had already, with its sectarian interpretation of the concepts referred to above, lost its ability to

> initiate new dialogue. It was the 12 September coup, however, which actually destroyed its influence (Tekeli, 1990, p. 267).

Feminism, which could find no place in bourgeois political parties, Kemalist women's organizations or in pre-1980 leftist politics, paradoxically had the obstacles to being heard lifted by the coup (Tekeli, 1990, p. 276). Although the political restrictions on political parties and labor unions "compressed the political spectrum and limited the opportunities within old political organizations", it "enabled women to free themselves from the boundaries of previously subscribed ideologies" (Arat, 1998a, p. 18). In fact, it is argued that the growing independence of the women's movement forced the few remaining leftist organizations to pay theoretic attention to feminism (Berktay, 1995, p. 318). Such attention is said to be the result of men in the leftist movement being both positively affected by feminism, but also a preemptive move to break feminisms effect in the left to secure their own positions (Berktay, 1995, pp. 319-321).

As the regulative power of the state was eroded through neoliberal policies embarked on by the first political party after the junta, namely the Motherland Party (ANAP), and as political liberalization gave way to a new political elite which "tried to reconstruct national identity by synthesizing Islamic values with a pragmatic rationalism", "seemingly new actors that often represented existing centers of power in society appeared on the political scene (Acar & Altunok, 2012, p. 36). This economic and political environment became the stage on which Islamic, Kurdish and feminist oppositions emerged, sharing "the common characteristic of challenging the basic pillars of Turkish modernization; secularism, and the conception of Turkish national identity" (Acar & Altunok, 2012, p. 37). In the 1980s the feminist movement thus began to genuinely challenge the Republican conception of gender equality, and criticize the Kemalist modernization project on the basis of the structural characteristics of patriarchy (Acar & Altunok, 2012, p. 37). The state was reminded of its obligations under international human rights treaties, especially the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Turkey had become party in 1985. Women's human rights advocacy groups petitioned for the implementation of

CEDAW in 1986, collecting 7,000 signatures in the process (Ecevit, 2007, p. 195). Campaigns against domestic violence were initiated, and women's groups started celebrating the 8th of March (Women's Day). Campaigning on issues regarding women's human rights steadily increased and diversified, including domestic violence, rape, sexual harassment, unequal treatment before laws and courts, etc. (Ecevit, 2007, p. 195).

In effect, the emerging independent women's movement bore the hallmarks of second wave feminism, especially in two regards. First, it was characterized by pursuing advocacy not against the state but towards society, acquiring a "new political outlook that attempts to sustain a civil society in the shadow of a powerful Turkish state" (Tekeli, 1990, p. 284). Second, in pursuing action in civil society under the shadow of a power state, the women's movement is characterized as being a platform for all women regardless of ideological persuasion or ethnic or religious identity:

> Although there are a great variety of diagnoses of women's problems, proposed solutions, and ideas for the development of strategies, there is (as yet) no differentiation among feminists in the form of reformists, socialists and radicals, nor is there any antagonism to speak of between feminists, female Kemalists or even conservative Muslim women (Tekeli, 1990, p. 285).

The situation changed remarkably, however, in the next decade. The 1990s was stage to the differentiation of the women's movement along secular, religious and ethnic lines, as well as the institutionalization of the women's human rights in formal state institutions and increasing engagement with the state in effecting change in women's lives.

The differentiation of the women's movement in the 1990s is summarily described by Aksu Bora and Asena Günal, who state:

> Another characteristic of the 1990s was that women who had not been a part of the feminist movement in the 1980s developed feminist demands within the Kurdish movement and the Islamist movement, and organized around these demands. Kurdish women questioned the patriarchy within

> nationalism and the 'Turkishness' of feminism in Turkey. 'Muslim feminists' on the other hand rejected the selective-oppressive attitude of the feminist movement and tried to show that there was no contradiction between their beliefs as Muslim women and their rejection to be oppressed. These two issues, identified as 'separatism' and 'fundamentalism' in the country's political agenda caused serious arguments and dissensions among women (Bora & Günal, 2002, p. 8).

The increasing presence of Islamist women in the 1990s is attributed to the widening of the support base of Islamic parties (beginning from the municipal level and as exemplified by the rise in political support to the Welfare Party) and the organization of women in their ranks, as well as the development of civil society platforms such as NGOs, which enabled these women to convene in the public arena to formulate collective strategies (Acar & Altunok, 2012, p. 39). The headscarf issue played a "pivotal role" as an "identity marker of the Islamist women's movement" (Acar & Altunok, 2012, pp. 38-39), and "The political and legal struggle for lifting the ban on the 'headscarf' in the universities and civil service was instrumental in consolidating the conservative women's movement" (Acar & Altunok, 2012, p. 41). Strong opposition was voiced to the increasing strength of Islamist women by Kemalist women who were constituted mainly from middle-class, middle-aged and educated women, who saw the headscarf as a regression from Republican reforms and the repudiation of the secular nation state that had done so much for women (Acar & Altunok, 2012, p. 42). This reaction was understandable, as the Islamist movement had reversed the rhetoric of women's rights that had hitherto reigned supreme in Turkey, and characterized secularism and modernism as the main reasons for the degradation and exploitation of women (Acar, 1995, pp. 80-81). Mainly directing their messages to women of families in rural areas of Turkey or similar groups in the big cities such as the daughters and wives of small traders, the Islamist women's movement, while not against the education of women, has generally been intolerant of working outside the home (Acar, 1995, p. 84, 95). More recently, Islamist women's groups have taken part in protests against Israel, or the organization of aid campaigns for victims of natural disasters around the world. However, the focus and beneficiaries of these activities

have been Muslim populations, thus exemplifying the "religion-defined sphere of activism of the conservative women's movement" (Acar & Altunok, 2012, p. 42).

The demands of Kurdish feminist groups, on the other hand, are best described by Necla Açık:

> Kurdish feminist groups and "independent women's platforms", have been formed in the mid-1990s as a reaction to the appropriation of the women question by nationalist parties in which men constituted the majority. These women criticize the instrumentalization of women within the "national cause". They support an independent Kurdish women's movement against an approach which suppresses the fight against sexism in the name of national unity (Açık, 2002, p. 280).

In connection to a political context in which the Kurdish insurgency was at its peak, a very good example of the differentiation of the feminist movement in Turkey can be seen by the creation of the first women's feminist magazine called "Roza". Their editorial board of the magazine have identified themselves as a group of Kurdish women who have felt excluded by Turkish feminists due to their Kurdish identities, and from the Kurdish political scene due to their feminist identities (Açık, 2002, p. 281)

It may be unfair to suggest that second wave feminists should have seen these fissures in the movement from where they stood in the 1980s. Tekeli's account of an independent women's movement operating in unison within the auspices of civil society under the shadow of the strong Turkish state is an understandably romanticized and perhaps accurate account of the political environment in which the women's movement found itself (or created for itself) following the coup. As with all second wave feminist accounts, however, the problem lies in a functionalism which accords the state the role of the "oppressor", and civil society the role of "savior". This leads to a failure to see the differentiation of both the "state" and "civil society", thereby overshadowing the real differences of perception and identity in these very broadly defined spheres, and the formulation of strategies that reflects these differences:

> "Criticizing the existing state-dominated and exclusionary conception of politics, this perspective reflected a trust in bottom-up movements and their political agency as essentially democratic and liberating. However, such analysis also tended to homogenize many forms of 'politics of difference' under the common banner of being 'against the state'. It thus tended to overlook the variation in the grounds on which each activism had been built, and how it compared to the universal standards of women's human rights and gender equality" (Acar & Altunok, 2012, pp. 43-44).

Another crucial issue which the emphasis on civil society proposed by second wave feminists overlooks is the advantages that can be gained by cooperation with the state. Very good examples of this are the debates surrounding the efforts to institutionalize women's human rights in the 1990s. This issue also has a very important bearing for the thesis at hand.

Noting the insufficiency of legal rights for women on paper and the significance of institutional structures which can implement, monitor and make these rights priority issues in the national agenda, Selma Acuner (2002) recounts the history of the General Directorate for Women's Status and Problems (Kadının Statüsü ve Sorunları Genel Müdürlüğü - KSSGM). Established in 1990 before the decade of coalitions in power when only the Motherland Party (ANAP) held power, the KSSGM was founded in a conservative political context. The institutionalization of women's human rights under the roof of the state began with the Advisory Board for Policies Towards Women under the State Planning Organization in 1987. The main reason for its creation is said to have been the necessity to fulfill international obligations, rather than the demands of women *per se* (Acuner, 2002, pp. 126-127). The first steps at institutionalization, however, seems to be in the wake of the movement for the ratification of CEDAW mentioned above. Nevertheless, the same State Planning Organization later gave birth to a report from the Specialized Commission on the Turkish Family Structure, which discouraged women from seeking work outside the home and emphasized the women's role as homemakers (Acuner, 2002, pp. 128-129).

The institutionalization of women's human rights was hotly debated prior to the establishment of the KSSGM through a Council of Ministers decree on 20 April,

1990. While Professor Nermin Abadan Unat argued that the issue of gender equality fell under the responsibility of the state and not voluntary associations, she argued for the necessity to "chain and anchor" these issues within state bureaucracy, and pointed to the fact that Turkey was the only member to the Council of Europe which did not have a "national mechanism" (Abadan-Unat in Acuner, 2002, p. 132). In opposition, Tekeli noted that any such endeavor could not escape instituting state feminism, and that therefore one had to approach the issue with "care and skepticism" (Tekeli in Acuner, 2002, p. 132). A section of the women's movement identified the state as *the* greatest patriarchal structure, and was adamantly opposed to form a direct relationship with it (Acuner, 2002, p. 134). Acuner's evaluation of this approach stands as a constructive criticism of a wholesale rejection of working with the state:

> In this sense, their (those opposing institutionalization) cold reception to an organization under the roof of the state is both understandable and consistent with their general approach. However, taking into consideration the necessity to transform discriminatory institutions in order to create a democratic state accountable to women, instead of rejecting the state through a monolithic perspective one must take into account how it can be transformed from a gender equality perspective (Acuner, 2002, p. 135).

Following the establishment of the KSSGM through the persistent efforts of the Minister of Labor and Social Security, İmren Aykut, however, criticisms started pouring down. The institution was only given 20 vacancies, with only 4 of this cadre designated as "experts". This meant that the institution was actually a way to ward off the issue of women's rights, and reflected the traditional bureaucratic maneuver of focusing on form rather than the content (Acuner, 2002, p. 131). The creation of the KSSGM had been realized without consulting women's human rights advocacy groups in civil society, resulting in vague and concern inducing wording in its founding law, including such phrases as "national perspective", "monitoring", "guiding" and "protecting women's status". Opposition parties and women's human rights advocates criticized the creation of the KSSGM for trying to control the women's movement. Kemalist feminists criticized the Law creating the KSSGM as the "headscarf law" due to the fact that Additional Article 17 of the Law

creating the KSSGM (numbered 3670) amended the Law on Higher Education numbered 2547 by stipulating that clothing in Higher Education Institutions shall not be faced with prohibition. The general understanding was that Imren Aykut, the architect and main supporter of the Law in the Cabinet, had made this concession in order to secure the ratification of the Law creating the institution (Acuner, 2002, pp. 136-152).

Despite all the criticisms and the problems with inadequate finance and human resources, however, a look back at the achievements of the KSSGM reveals that it has exceeded expectations. The institution is commended for its creation of a gender database in Turkey, the creation of human resources through its contribution to women's rights centers in universities, the establishment of international relations and networks, the initiation of legal work and the creation of policy in coordination with relevant women's CSOs (Acuner, 2002, p. 153).

In the past decade, there has been increased and rather routinized state-civil society cooperation in the area of women's rights and gender equality. Women's human rights groups have been very effective in joining forces and lobbying the state in amending the Civil Code, the Penal Code and the Constitution, inserting provisions in favor of women's human rights and gender equality (Dedeoğlu, 2010, p. 125). A most recent example of such cooperation was observed in the adoption of the Law on the Protection of the Family and the Prevention of Violence Against Women dated 08/03/2012 and numbered 6284 which was designed to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women (Istanbul Convention).

Second wave feminism has contributed greatly to the establishment of an independent and autonomous women's movement with its insights into the way in which the development of such a movement was inhibited first through state feminism, then by its subsumption into class based ideological movements. However, the ontological separation of the state from civil society and the pre-determined roles accorded to the state as the main patriarchal structure and civil

society as the main democratizing actor, inherent in second wave feminism, has led to overlooking the real advantages that could be realized for women's human rights by working with the state.

3.5. Discrepancies and Caveats in the Narrative: A Promise for a More Relational Approach?

This section will attempt to bring out the discrepancies, disagreements and caveats placed in the dichotomous narrative described in the previous section. This is important in that it will prevent the setting up of a "straw man" narrative, so to speak, that could readily and easily be defeated. It will present the dichotomy narrative in a more complex light. Doing so will show that much of what needs to be said in order to posit a more relational, rather than dichotomous, view of the development of state civil society relations in Turkey already exists, to a certain degree, in the works of the proponents of the dichotomy narrative. In fact, much of the discrepancies, disagreements and caveats in the narrative, it will be argued, beg for an abandonment of the dichotomy narrative. However, it will be maintained that the proponents of the dichotomy narrative have not taken the crucial step in abandoning their ontological separation between the state and civil society, and therefore continue misrepresenting the potential of state-civil society relations, and contributing, inadvertently, to a discourse that harms human rights advocacy in Turkey.

First and foremost, it must be said that the liberal-prescriptive definition of civil society as a sphere of voluntary relations autonomous from the state and advocating further democratization has been hard to uphold in the Turkish case.

One of the most important initiatives for bringing CSOs in Turkey together has been the "Civil Society Organizations (CSO) Symposiums", a series of symposiums which have been conducted through the efforts of a group of CSOs alongside the History Foundation (*Tarih Vakfı*) in order to "increase communication and cooperation among CSOs in Turkey, debate the problems faced by these CSOs and

research possibilities to solve these problems" (Tarih Vakfı, 2011). These symposiums have been conducted since 1994, on a range of subjects from state-civil society relationships, participation of youth in CSOs to democracy in CSOs and the role of CSOs in the EU accession process to name a few. The proceedings of these symposiums have been recorded and printed by the History Foundation, and have proven to be invaluable guides as to the way in which civil society has been understood in Turkey, especially by civil society activists and academicians, as well as acting as a journal to one of the most concrete efforts in Turkish history to create a civil-society based democratization spur. However, the effort has not been able to "take off" from definitional issues, especially those concerning in general the "public sphere" and specifically the definition of CSO, which has impaired any substantive contributions to democratizations that the symposiums were aiming to bring to the fore.

The concept of "civil society organizations" as the correct terminology in the Turkish case was introduced by the symposium held on 16-17 December 1994. The research report titled "Leading CSO's" by Aydın Gönel (1998) which was the third and final part to a research project in the context of these symposiums in order to provide empirical data about the types, general structure, goals, activities, financial indicators, etc. of leading CSOs in Turkey, describes the use of the concept of "CSOs" in the research as a deliberate one due to the fact that the concept denotes a more expansive organizational field than such concepts as "third sector", "voluntary organizations", "NGOs" (non-governmental organizations) and "non-profit organizations", concepts which only cover associations and foundations. Gönel (1998, p. 1) explicitly states that the reason for a more expansive concept is the desire to view organized civil society in its totality. This more expansive concept denoted an agreement that chambers and bar associations, to which membership is non-voluntary in that it is required by law, are an important part of civil society, so much so as to be indispensable to an empirical research of civil society in Turkey. Such a requirement according to Gönel is the result of the traditional approach of the state towards civil society in that the former has attempted to encircle and intervene in every aspect of the latter. This analysis should be read as a concession

that civil society cannot be considered, let alone researched, without taking into account the intervention of the state in the field: "If we understand CSOs as institutions that are out of the reach of the state and/or local administrations, then taking into consideration the present laws and related statutes, we will have restricted organized civil society to a very narrow area" (Gönel, 1998, p. 1). Yet this is exactly the trap into which the participants of the symposiums ultimately fall. In the seventh symposium of the "CSO Symposiums" series titled "CSO-State Relationships in Turkey on the Road to the European Union" held in 2-3 June, 2000, Silier defends the concept of "CSO" by stating that this concept was established in 1994 with a view of the importance of the separation of civil society from political society in Turkey; in order to attract attention to the emancipatory process based on this separation; to monitor, guide, and take on some of the responsibilities of the state which in Turkey has been authoritarian and despotic in many instances and unable to achieve democratization (2001, p. 29). In the opening speech of the first sitting of the same symposium, Şenatalar, for instance, states:

> For CSO's to be autonomous in their relationship with the state is necessary by definition. CSOs are based on voluntary involvement and are not profit-seeking. A characteristic that is as important is that they are autonomous. Therefore when they start losing their autonomy when under pressure they start losing their essence (Şenatalar in Tarih Vakfı, 2001, p. 14).

The contradiction is clear therefore once normative and empirical efforts at defining civil society are compared. The former separates civil society from the state and accords democratizing potential to the whole of civil society thereby instrumentalizing the concept, while the latter understands the state's involvement in civil society and although lamenting this fact, conducts research accordingly. The two are paradoxically part of the same civil society discourse, and the contradiction serves to show the arbitrary nature of efforts at attributing an inherently normative role to the concept of "CSO".

The contradiction is even clearer when taking into consideration the views of Ioanna Kucuradi in a later symposium. Kucuradi has been a prominent figure in the

inauguration of the concept of "CSO" in Turkish political life, and rejects a broad definition of CSOs, compared with the views of Zeynep Davran, who argues against such a narrow definition. Emphasizing the danger of CSOs becoming increasingly self-absorbed, Kuçuradi builds on the argument that it is necessary to debate the reasons for the existence of these organizations and to form a unity in language and meaning on fundamental concepts. With this aim in mind, we enter into a definition of CSOs as well as democracy and politics, which is heavily (and knowingly) dependent on concepts that are in fact open to discussion, especially the concept of human rights:

> Civil society organizations are organizations that are created voluntarily, although not all 'voluntary organizations' are civil society organizations. CSOs are organizations which perform a public service in order to realize valuable objectives, and which are founded by people who are versed and knowledgeable on relevant topics willing to contribute to this end. These characteristics separate them from associations that have been formed by people who come together based on their private interests, such as the Tango lovers Association…They (CSOs) are organizations which contribute, not with words but by actions, to continually create regimes based on human rights…CSOs can also be distinguished from organizations that are founded in order to protect and develop the rights of its constituent members (for instance trade unions) as well as profession chambers (such as bar associations) that are founded in order to develop a profession and protect the rights of the members of a certain profession. The latter organizations are not voluntary organizations; membership is necessary in order to pursue a certain career (Kuçuradi in Tarih Vakfı, 2003, p. 8-9).

Such a narrow definition inevitably leads to a reformulation of what politics should mean:

> I also believe that we should change the widespread understanding of the state as well as the conduct of politics. The ubiquitous understanding of politics today maintains that politics should be concerned with balancing clashing group interests and understandings, "meeting in the lowest common denominators", and establishing consensus or compromise between sides. Yet politics should be the search for and adoption of the most suitable path to make possible the realization of human rights and the conditions necessary for the realization of goals of value in a society, goals that have been philosophically evaluated (Kuçuradi in Tarih Vakfı, 2003, p. 9).

In response to such a narrow definition of CSO and politics, Zeynep Davran makes a very salient point:

> I believe that Kuçuradi has veritably narrowed CSOs down. Personally I do not share her views. Your definition stands as such: in the last instance, voluntary associations that are involved with human rights are characterized, or should be characterized, as CSOs. This was your assumption and you added the example of the Tango lovers Association and implied that the Tango lovers Association is not a CSO. But when I look at the list in front of me I see the Kadıköy Friends of Science, Culture and Art Association. Now I do not see a difference between these two organizations. That is my first point. My second point is that in front of me there is the Turkish Psychologists Association, and in the end they are a profession organization. That is, if I approached them I would not be able to become a member. The reason why the Turkish Psychologist Association convenes would be to discuss and develop the latest evaluation or treatment forms implemented in psychology. This is why Kuçuradi's definition seems to me to be restriction; behind the sentences she uses there is a implication of "this is how it should be" and therefore her own wishes (Davran in Tarih Vakfı, 2003, p. 19).

Kuçuradi then responds by affirming Davran's evaluation: "You understood me correctly, Zeynep. Indeed, I believe that the concept of CSO should be understood in a much more narrow way than it is today" (Kuçuradi in Tarih Vakfı, 2003, p. 19). Such strict definitions have been the reason why the CSO symposiums, despite being the most energetic attempt at constructing a public space between the state and private life, have been ineffective. There is a seemingly never-ending effort at and battle over constructing this space, which obstructs concerted efforts at actually defining the political space and influencing decision-making organs. The definitional problem has become an existential problem. The symposium simply could not formulate a commonly agreed notion of public/private.

It is also worth noting, however, that the STEP report has not been exempted from definitional problems either. The Advisory Committee, made up of various civil society experts ranging from civil society specialists, representatives of the private sector as well as state officials and created in order to direct the project, has been the scene of numerous debates on which types of CSOs to include in the scope of the Project. Specifically, we are told that it has come to the attention of the study

that trade unions, sectoral associations and chambers of professions, the status of which as CSOs can be disputed, show differences as regards the legal regulations, membership and resources from associations and foundations that have always been seen as part of civil society, the main difference being that the concept of "voluntary membership", in that membership in the chambers is a legal obligation. Especially relevant to the topic of nationalist/racist organizations, a very peculiar and largely unexplained contradictory phenomenon is noted, namely that while a consensus was reached to use the broad definition offered by CIVICUS of civil society in the scope of STEP, thus including organizations that measure unfavorably with democratic values (STEP, 2006, pp. 39-40):

> In the process of research the organizations focused on have generally been those which hold the aim of directly or indirectly contributing to Turkey's democratization and good governance while study has not been conducted on mafia-type organizations encompassed by the CIVICUS definition (STEP, 2006, p. 40).

The only way this glaring and bravely conceded contradiction can be explained is through a deliberate attempt by the researchers to exclude these organizations.

Yet the one definitional topic which has been able to find agreement by all the Advisory Committee members was the necessity to exclude political parties from the list (STEP, 2006, p. 30). The reasons given for this is that (a) the close relationship that has been formed by political parties with the dominant strong state tradition in Turkey; (b) the choice of political parties to place themselves within political society rather than between society and the individual; and (c) the ideological and legal state control over political parties (STEP, 2006, p. 40). This resonates strongly with the idea that political parties have gone over to the dark side of the state, and that their claims to representing society have been seriously called into question (Toprak, 1996, p. 106). A few very important examples can be given to bring out this position in the STEP report. For instance, there is a consistent tendency to view ideological ruptures in civil society as "dysfunctions within civil society" rather than as a constitutive principle of civil society itself, which serves to portray civil society as a sphere that is inherently above politics and ideology. This

is exemplified by the fact that, under the ever abstract notion of “Trust and Social Capital”, separation along the lines of “ideology, geography and ethnicity” is said to be the result of low levels of trust and tolerance in Turkey, which is also detrimental to cooperation among CSOs (STEP, 2006, p. 17). Another example of this tendency can be seen by the view that the concept of civil society is being used by various ideologies and actors for their own interests (STEP, 2006, p. 38), thus strongly implying that civil society is a pure concept contaminated by those who use it for their narrow ideological goals. Yet another example is the argument put forward in the study that political ideas come to the fore as a result of the fact that disadvantaged groups are not equally represented, while participation is politicized due to its association with ethnicity (STEP, 2006, p. 51). Moreover, it is stated that the reason for the lack of activities which promote tolerance is due to the fact that the tolerance issue cannot be dealt with without touching upon sensitive issues concerning minorities (STEP, 2006, p. 94). What we are left with is a vicious circle which falls far short of explaining why intolerance has emerged in the first place and what can be done to remedy it.

Kalaycıoğlu (2002b), however, does have an answer to why this intolerance has emerged. Arguing against the view that this is due to the state being too strong and thereby hindering the growth of civil society, and that civil society is kept weak in Turkey due to the state's emphasis on uniformity and collective reason rather than diversity and individual will of membership, Kalaycıoğlu presents a contrary view. Measuring the strength of the state in terms of the mobilization, regulation and distribution capabilities, he concludes that Turkey is actually a weak state, despite the perception of the strong "state tradition" in Turkey. Therefore it is coercive and arbitrary rather than strong, and it is its relative weakness that constitutes an impediment to the development of civil society: "This weakness leads to a lack of regulation, extraction and distribution capabilities of the state, which renders the state elite (Center) somewhat vulnerable and fearful of the dissatisfaction of the masses (Periphery) (Kalaycıoğlu, 2002b, p. 71).

A proponent of the strong state tradition, Toprak draws an altogether different conclusion than the traditional one equating a strong state tradition with a weak society. Instead, she argues that while politics in Turkey remains linked to clientalism and network ties, the regime's legitimacy is ultimately contested on criteria originally developed by the republican state, which allowed for upward social mobility for people of different social classes and ethnic backgrounds, and that a guarantee of civil rights and non-discrimination before the law should be included in the criteria of a strong state. In this regard, the strong state is said to have prepared the conditions for the development of civil society by allowing the orderly competition of civil society without privileging a specific ethnic group, family, clan or people (Toprak, 1996, pp. 87-88). Toprak also adds that the views emphasizing the legacy of a strong state tradition in Turkey should take into consideration a century and a half struggle to limit state power, and the way in which associational life prospered during the final era of the Ottoman Empire and after the single party period in the Republic (Toprak, 1996, p. 91).

This is a valid point, as periodizations of civil society invariably tend to differentiate the development of civil society both in terms of quantity and quality as before and after the 1980 coup:

> Turkish civil society has traditionally been portrayed as weak, passive, and controlled or channeled by the state through corporatist structures. Some would attribute this to vestiges of Ottoman political culture; others would point to the bureaucratic-authoritarian nature of the early Turkish republic. In any event, the stereotype was that Turks looked toward a *devlet baba* ("father-state") rather than to social self-organization to provide leadership and essential services and that there was little genuine grassroots mobilization to underpin Turkey's unstable democratic institutions. This stereotype was always a bit of a caricature, as Turkey had thousands of different organizations and *vakiflar* (foundations) and one might even say that some of the more unruly elements in Turkish civil society contributed to the instability that led to a military coup in 1980 (Kubicek, 2005, pp. 366-367).

In fact, a "public space" in which new media forms could circulate and voluntary associations could meet was created during the later years of the Tanzimat era, and throughout the Abdulhamit II era, stretching into the Young Turks period. A

fascinating account of the rise of political sensitivity and the "middle ground" taken by intellectuals were the satirical gazettes. The first satirical gazettes were published in 1873 ("Haval" and "Çıngıraklı Tatar"). Cartoons served to bridge the gap between the literate and illiterate culture, as they were more mobile than newspaper articles; they could be torn out, passed around and hung up on streets for everyone to see and interpret (Brummett, 1995, p. 433). The satirical press expressed anxieties of the 1908 Young Turk revolution, as satirists portrayed the Ottoman Empire as a 'sick man' because of the willingness of Ottoman "collaborators" to sacrifice Ottoman traditions on the altar of European "progress" and culture. Satire was used as the skeptical voice of the revolution, and meaningfully enough, blended Nasreddin Hoca with cartoon styles from foreign periodicals (Brummett, 1995, pp. 434-436).

Indeed, the primary tools and channels of communication that emerged in the period of modernization were newspapers and voluntary associations, which created a new "interaction site and a new vocabulary of self-definition" for the Ottoman elite. It was the print media in general and newspapers in particular that enabled the abstract vision of the Ottoman motherland to replace the historic image of the paternal Ottoman sultan, as well as playing a vital role in the changing of the existing relation between knowledge and control. And as ideas seeped through the control of the Sultan, individuals coalesced under voluntary associations: "By doing so, they trespassed existing Ottoman structures to create a new intermediate one between the individual and the Ottoman state, one that acted independently of the family, household, neighborhood or the workplace" (Göçek, 1996, p. 125). Following the Tanzimat Edict and with the opportunities given to commercial sectors, foreigners and non-Muslim merchants led in terms of organization and the creation of collective agencies for the expression of "public opinion". Voluntary associations did not suddenly appear and start playing an important role, however: "In addition to the religious endowment, the Ottoman household structure and informal gatherings within the context of households provide the other organizational basis that supported the establishment of voluntary associations" (Göçek, 1996, p. 131). However, in the 19th century, the context within which such

interactions occurred expanded. They included new western-style schools, government offices, and public performing art centers such as the theater. For example, Nazım Paşa is quoted as commenting on how "a group of youth who thought themselves as enlightened met most nights to go to the only theater in town where they would discuss the play and affairs of the empire during intermission" (Göçek, 1996, p. 131). The first attempt at a civil society organization (CSO) was the Beşiktaş Cemiyeti, which was formed in 1826 and which consisted of voluntary members so long as they fulfilled specific criteria (Alkan, 1998, p. 86; Göçek, 1996, p. 131)[7]. The first women's CSOs were established among non-Muslims, and publications helped in the formation of such "secondary institutions" by providing a basis for a "public space" in which "public opinion" could be voiced (Alkan, 1998, p. 88). The rise of CSOs in Istanbul is reflective of the increased drive for modernization, and its seemingly unstoppable progress. Alkan notes, for instance, that despite the authoritarian reign of Abdulhamit II, and the constant obstacles in front of political mobilization in this period, underground political organizations continued to be founded. More importantly, the investment in certain areas for the purpose of modernization, primarily education, communication, transportation, industry and bureaucracy, all formed the basis of the explosion of political organization following the Young Turk revolution (Alkan, 1998, p. 94). Alkan even states that the reign of Abdulhamit II was one of the sources of the feminist movement and organization experienced during the Second Constitutional period, due to the increase in the literacy among women, as well as the fact that women became more involved in the social and economic life of society beginning with their employment as nurses, midwives, teachers and authors (Alkan, 1998, p. 99). Kandiyoti also notes that a dozen women's association was founded between 1908-1916, ranging from philanthropic organizations to those committed to struggle for women's rights. For example, the Teali-i Nisvan Cemiyeti (The Society of the Elevation of Women) was founded in 1908 by Halide Edib and had links with the

[7] Although financially independent from the palace, Göçek voices doubt as to call it the first Ottoman voluntary institution due to its vague intended aim of "learning and teaching among all those individuals longing for science and education" (1996: 132).

suffragette movement. Also the Mudafaa-i Hukuk-i Nisvan Cemiyeti (The Society for the Defense of Women's Rights) was the best known and most militant, fighting to secure women's access to paid professions (Kandiyoti, 1991, p. 29).

Moreover, a vibrant civil society did in fact exist prior to the 1980 coup. In fact, it has been argued that civil society experienced its heyday prior to this period, in terms of the proliferation of active organizations such as trade unions, student associations and TÜSİAD, which was formed in 1971 (Balı, 2000, p. 33). Indeed, NGOs have existed in Turkey before the 1980 military coup in very diverse forms reflective of the different interests held by the respective sides of the class struggle, one example being the left-leaning Peace Association which was shut down by the 1980 military coup. Interestingly enough, right and left-wing organizations had formed organizations even in the ranks of the police, the latter, namely the Police Association (Polis Derneği - Pol-Der) (holding the majority of the police in its ranks), shared a similar fate of oppression and closure as all other left-leaning organizations (Öner, 2003).

Yet, the main point of the strong-state tradition thesis is that the civil society which grew after the 1980 coup was quantitatively larger and qualitatively different, better approximating the liberal-prescriptive definition of civil society as voluntary, "post-political" (as explained above) and less ideologically inclined and issue-specific.

In answer to this it can be said that increasing numbers of CSOs as well as increasing issue areas with which they are involved have by no means translated into an emergence of a post-political environment. In fact, it is plausible to argue that the mandate of advocacy groups in civil society which grew after the 1980 coup which had shut down most of the active associations in the country, reflected the various historical struggles and ideological positions of the country. This was evident in the way in which, following a loosening of the political ban on parties and associations in the ‘90s, the field of human rights was divided among actors which placed priority on different issues that had gangrened in Turkish politics. Thus, internal debates on the extent to which the Human Rights Association needed

to adopt an interventionist/radical policy as well as on the way in which it would deal with the issue of human rights violations against Kurdish dissidents led to ruptures within the organization, leading to the resignation of former president of the İHD, Nevzat Helvacı, and the formation of a Turkish Human Rights Institution (not to be mistaken with the state initiative entitled "National Human Rights Institution") under his presidency, operating along a Kemalist ideology (Plagemann, 2001, p. 377).

Similarly, the Organization of Human Rights and Solidarity for Oppressed People (*İnsan Hakları ve Mazlumlar İçin Dayanışma Derneği - Mazlum-Der*) was founded in 1991 as a human rights organization prioritizing state abuses against Islamic actors. Although Plagemann (2001) explains the evolvement of *Mazlum-Der* into a more westernized actor increasingly basing its argument on human rights on "western" principles instead of exclusively on Islam, he concedes that this organization is still tied to its Muslim member base, a fact that has come to the fore in its reaction to the Sivas Massacre[8]. Plagemann states that cooperation among human rights groups is limited, due to the fact that members of these different organizations actually come from political organizations which have violently fought each other before the 1980 coup, and states that the level of cooperation in the future still remains an open-ended question (2001, p. 394). What is more, the increase in human rights activities conducted by occupation organizations and universities has also been fragmented. For instance, the Lawyers' Associaton (*Hukukçular Derneği - HD*) was founded as an Islamic affiliated association focusing on defendants supporting their views, and was involved in publications

[8] The event called the "Sivas Massacre" occurred when 33 intellectuals were burned alive when the building in which they were attending festivities of an Alaouite association ("Pir Sultan Abdal Culture Association") was torched in a religious fundamentalist riot of nearly 20000 people in 1993. Government and state forces did not interfere throughout the process, and only did so when it had become too late. It was later found out that the massacre was pre-planned, and that the mayor of Sivas had incited the crowd. At a time when nearly every existing organization and movement denounced the massacre, *Mazlum-Der* in 1994 stated that the massacre was the result of provocation by Aziz Nesin (a famoust author/satirist) and that it was not pre-planned. *Mazlum-Der* changed its stance in 1997 by focusing on state institutions which failed to prevent the riot, but has never openly criticized the mentality behind the massacre (Plagemann, 2000: 392).

and meetings on Islamic law and human rights. On the other hand, the "Modern Lawyers Association (*Çağdaş Hukukçular Derneği* - *ÇHD*) belonged to a left-Kemalist line of thought, and refused to cooperate with what it called "any type of reactionary Islamic organization", in this quote referring to *Mazlum-Der* (Plagemann, 2001, p. 377).

Ideological fissures in civil society also manifested itself strongly in the women's movement, giving way in the '90s to a number of Islamist Sunni-Conservative women's CSOs in Turkey as a result of the specific policies by the military regime and the post-coup government of the Motherland Party (Anavatan Partisi - ANAP). Pressing a neoliberal economic as well as a political agenda, Özal's policies were termed a "second Republicanism"[9], and was an important aid to the establishment of a more conservative discourse in Turkish politics due to, according to Barbara Pusch (2001, p. 465) its questioning of the cultural and political hegemony of the Kemalist elite. This new discourse was coupled with the attempts of the military regime to present a depoliticized understanding of Islam to society as a unifying identity (Pusch, 2001, p. 465). The '90s saw the rise of the Islamic "Welfare Party" (Refah Partisi-RP), the growth of Islamic media, and perhaps most importantly the growth of "green capital", denoting businesses owned or managed by organized Islamic individuals/groups (Pusch, 2001, p. 466). This led way to the creation of Islamist counter-elites, which was especially important in creating areas in the

[9] The "Second Republicanism" discourse came into being in an environment when the *ANAP* coalition was dissolving and the Kurdish problem was escalating. Ozal's (Prime Minister from 1983-1989 then President from 1989-1993) solution to the situation was to diffuse the view of a peaceful coexistence of cultural differences through a neoliberal restructuring of the state-civil society relationship (Erdoğan & Üstüner, 2005: 658-659). Prominent journalists such as Mehmet Altan and Cengiz Candar took on the task of disseminating this view, which in effect blamed the old order (called the "First Republic") and the power which the military-civil bureaucracy held as well as proposed downsizing the state. Also, the nation state and centralized economy were criticized, while the main obstacle in front of Turkey was deemed to be the military make up of the view that the first republic and its single party regime conceptualization of politics stifled the development of civil society with its imposition of Kemalist ideology, obstructing the representation of different identities in a cultural mosaic.

public sphere for veiled Islamic women, which is sometimes depicted in glowing terms:

> The veiling of women today, on the other hand, also signifies the political participation and the active voluntary reappropriation of an Islamic identity by women. As such, the new veiling has almost nothing in common with the traditional image of Muslim women as uneducated, docile, passive and devoted to their family life. On the contrary, young, urban, educated groups of Islamist girls are politically active and publicly visible (Göle, 1997, p. 57).

The discourse used by Islamist women's organizations, however, did not necessarily fit the description quoted above. The traditional image of the Muslim woman was championed in efforts to create a conservative discourse, whereby the woman's roles as a selfless mother, spouse and a believer were pushed onto the social sphere through political activity, thus building a bridge between the traditional Islamic values accorded to women in the private sphere and the modern public sphere (Pusch, 2001, p. 472). The spirit of the discourse of Islamist women organizing in CSOs is succinctly stated by Pusch, who notes that while most representatives of Islamist women's organizations she interviewed criticize the "Kemalist elites" for failing to respond to the social, political, moral and religious demands of the Turkish people, most define themselves not as a political pressure group but as representatives of the Sunni-conservative Turkish people and servants of the state (Pusch, 2001, p. 483). This attitude is in turn explained by the affinity of these women to the idea of a strong state and a docile society, as well as their self-perception as the representatives of the people (Pusch, 2001, p. 484).

Another very important caveat in the dichotomy narrative and the liberal-prescriptive definition of civil society is the acknowledgment of the existence of "CSO"s that do not fit this definition. This caveat, however, comes in the form of warnings. Rather than seeing the existence of such CSOs as challenges to the normative definition used, scholars opt to narrow the definition of CSOs even further:

> It is however a mistake to attribute in an *ipso facto* manner 'positivity' to civil society, insofar as it involves not only democratic discourses, but also essentialist identity claims, voiced by religious and ethnic fundamentalism, and arguing for reconstructing the state-society/individual relations in a communitarian basis. In this sense, we should acknowledge that the global talk about civil society contains both 'the use and the abuse of civil society' and therefore that civil society is a necessary but not a sufficient condition for democracy (Keyman and Icduygu, 2003, p. 221).

Keyman and İçduygu make it clear that a "discursive space" accorded to "ethnonationalist political strategies to voice their essentialist and anti-democratic identity claims" would constitute "serious problems" (2003, p. 222). Yet what makes identity claims anti-democratic is not elaborated. Furthermore, no defense is seen to be necessary for the argument that essentialist identity claims should necessarily be an "abuse" of civil society. If, as the authors say, a changing sense of modernity came about in Turkey through the appearance of Islamist organizations and their questioning of the Republican-secular sense of modernity (2003, p. 222), thereby paving the way for civil society to become an important actor in Turkish politics, one needs to consider that what can here be considered an essentialist identity claim (the Islamists) has not, following the authors' argument, necessarily abused civil society. In order to avoid such contradictions, the authors either needed to defend a narrow definition of civil society like Kuçuradi (please see quote above), or disengage the concept of civil society "from its incorporation into a liberal theory of state society relations, where state and society are juxtaposed as separate and conflicting spheres", and accept that "conflicts of production, territory, ethnicity, gender, religion and ideology" are inevitably reflected in a common political culture (Beckman quoted in Şimşek, 2004, p. 50).

Certain scholars contributing to the literature in the development of civil society in Turkey is also aware of the Turkish state's selectivity towards certain CSOs over others throughout the history of state-civil society relations. Ecevit (2007, p. 195) notes that the Turkish Association of Progressive Women, founded in 1965 and advocating women's social and political rights within a left-wing context was banned because "it was governed by socialist ideas and the mission of establishing a new social order. Since the APW threatened the state and challenged its ideological

base, it was repressed" (2007, p. 196). Kalaycıoğlu (2002a) also underlines that the state is not necessarily reflexively opposed to associations in Turkey, with a crucial caveat:

> However, we also observed that the state demonstrates an entirely different posture toward associations that advocate drastic change in the Republican system of the political regime. Human rights organizations that propagate an end to the unitary state and adoption of a federal system, claims to special rights by ethnic groups like the Kurds, or women who cover their heads in the *türban* on religious grounds…elicit little sympathy or tolerance from the state (Kalaycıoğlu, 2002a, p. 260).

Plagemann states a similar point when he argues that the division of labor between human rights organizations has enabled the state to label CSOs which touch on the taboo issue of religious, ethnic and minority rights as pariahs, with great aid from the mass media which pigeonhole these organizations as champions for anti-state causes in their coverage of the activities of these organizations (Plagemann, 2001, p. 367).

Another very important insight into the attitude of the state towards different women's rights advocacy is presented through a quasi-relational approach to the issue of state-civil society relations by Hakan Seçkinelgin (2004, 2006). Evaluating the view posited by Iris Marion Young that civil society fosters democratic inclusion by enabling excluded groups to find each other and prevents the state or economy to colonize the lifeworld, Seçkinelgin states: "The civil society voices that are recognized are only those referenced by the central authority of the state as the expression of embodied social values" (2006, p. 754). Seçkinelgin goes on to point out the peculiarity of the formation of a secular modern nation in Turkey, one of the most important pillars of which was the construction of a "new womanhood" (2006, p. 756). This imposition of state feminism during the formative years of the new Republic, accounts for the fact that "activist women and their groups in this civil society have always been seen as one of the fundamental faces of the secular society", thus including women in public but "only as a subordinate to the state's rationale" (Kandiyoti cited in Seçkinelgin, 2006, p. 757).

The above account shows how the position of “secular women” in the public sphere has been integral in the creation of the state as well as a complementing civil society, and explains how the state has been strategically selective against alternative conceptualizations of the women’s role in the public sphere, exemplified by the debate on the Islamic headscarf issue. Therefore, the crucial point that state-civil society relations have to be understood according to the specific context is emphasized: “In short, we are dealing with democracy in context, rather than some disembodied procedural system” (Seçkinelgin, 2006, p. 754).

Yet it would be wrong to view the state’s selectivity as having been defined and set in stone during and as a result of the “elitist” formation of the Republic. For changing governments as well as the “unintended consequences” of their policies, such as the strengthening of the Islamist hegemonic project armed with a differentiated fraction of capital (the so-called “green” capital) and a discourse in tune with the articulation of human rights with CSO advocacy, has shaken the supposedly stable foundations of the Kemalist elite traditionally said to be favored by the state. What is considered "red lines" are prone to shift with alternate hegemonic strategies of different governments. This is a very important point which is overlooked by Kalaycıoğlu and by Seçkinelgin, who are the closest among the scholars analyzed to come close to a relational view. However, they are hindered from making this connection due to their state-centric analyses, or rather, their insistence on holding onto a dichotomous differentiation of state and civil society, especially in the unique way in which this is supposed to have happened in Turkey.

The final point which can be seen as a very important caveat has to do with the effects of the European Union process in the development of civil society in Turkey. The EU candidacy process is generally seen in literature regarding democratization in Turkey in general and the development of an autonomous civil society in particular as quite beneficial, as government officials are pressured into reform through EU conditionality. Such conditionality can be said to have two related effects. The first is that it circumvents populist rhetoric, as government officials are somewhat cleared of the responsibility of implementing reforms which

may be unpopular with the population at large. The other effect is that advocacy groups in Turkey can use EU conditions to legitimate and accelerate the implementation of their demands. This is essentially what Keck and Sikkink (1998) have called the "Boomerang Effect", which is the name given to the way in which domestic groups attempt to pressure repressive states by establishing relations with international allies. Although these international allies are principally seen to be transnational networks and international NGOs, the same process applies for regional governmental institutions, such as the European Union, provided that the candidacy in such a regional institution is still on the government's agenda and is still popular with the public to the degree that it justifies abiding by the conditions placed in front of the country. Risse and Sikkink (1999) describe this process succinctly:

> …the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments (Risse and Sikkink, 1999, p. 5).

As members of the ARI movement[10], Diba Nigar Göksel and Rana Birden Güneş state that while advocacy for reforms did not lead to concrete results before Turkey was granted candidate status by the EU at the 1999 Helsinki Summit, the prospect of EU membership has enabled pro-EU organizations such as the ARI movement to refer to statements and directives from the EU in order to achieve concrete results (Göksel and Güneş, 2005, p. 58). The authors also note that the pressure on the government to comply with EU conditions has been strong due to the strong (70 percent) support for EU membership by the Turkish public. Aside from the more concrete contributions of the EU to NGOs such as financial assistance and project-

[10] A CSO with the following self-stated mission: "ARI Movement is an independent social movement that embodies a core value system of primarily liberalist concepts. ARI seeks to create a more equal Turkish society through the promotion of free speech and progressive ideas that are brought to life by increasing participatory democracy. At the same time, ARI promotes equal rights by educating the future societal leaders of tomorrow and does not limit itself to the domestic arena; rather it encourages youth to think about the bigger picture, where they can solve global issues as well" (Arı Movement, n.d.).

training, the EU membership process is said to have caused a more subtle shift in mentality among state officials, which, just like a boomerang, has come around to positively affect NGOs working in Turkey:

> According to the Helsinki Citizen's Assembly, the EU prospect has made bureaucrats in Turkey responsible for restructuring and reforming their ways. In order to do so, officials have needed the support of NGOs that have the expertise required. Thus, public administration officials in particular have become enthusiastic about cooperating with NGOs, and this in turn has contributed to the empowerment of the latter (Göksel and Güneş, 2005, p. 61).

Kubicek agrees that the EU has been and is a central actor in the Turkish reform process, and that "the fact that so many reforms that in the mid-1990s were deemed imprudent, impolitic, or dangerous have been adopted so quickly in the midst of a sea-change in Turkish politics…indicates that something has dramatically changed the calculation of the Turkish decision makers" (Kubicek, 2005, p. 373).

The claim that the EU has been a primary actor in the socialization of international human rights norms in Turkey, however, is tempered by some very important caveats. For instance, while accepting that EU support has aided the self-empowerment of Turkish civil society, Ergun notes that the outcome of international assistance to civil society development "is largely determined by the applicability and validity of instruments used by international actors as well as by the peculiarities of the domestic contexts and local responses" (2010, p. 511). In this relational framework, Ergun goes on to state that the creation of international networks between international actors (NGOs, IGOs, etc.) and domestic NGOs is dependent on a number of factors, including "the consent and willingness of local CSO to accept international discourses and agendas with regard to democratization" and civil society development, the availability of the necessary tools and skills such as knowledge of English, and a willingness to take the initiative to be involved in such international cooperation (Ergun, 2010, p. 511). Therefore, a congruence is necessary for there to be effective networking between international and domestic actors, which is not necessarily a foregone conclusion. In effect, some domestic

NGOs may be excluded from such networking, either unintentionally (e.g. lack of language skills) or intentionally (such as discordant ideological views):

> Yet, not all organizations are keen on the internationalization of their agendas and activities. The underlying reasons for the lack of interest can be explained in a number of ways. For some organizations this reluctance originates from ideological preferences. They are critical of foreign involvement in domestic change, arguing that there might be "hidden agendas" which might harm "national interests" (Ergun, 2010, p. 513).

In fact, most dimensions of EU involvement is seen in many different lights. Another good example posited by Ergun is the issue of EU funding. While international funding is said to increase the number of CSOs in Turkey and diversify the kind of activities they undertake, funding from the EU comes with specific requirements in the way in which these activities are undertaken, and project-writing is in danger of "professionalizing" CSO management in the image of private firms (Ergun, 2010, p. 514).

These are important caveats when assessing the "internationalization" of civil society in Turkey, or the effects of EU conditionality in the socialization of international norms in Turkey. Therefore, rather than seeing civil society as a homogenous sphere whose destiny is linked to reforms tied solely to the EU membership process, it may be more accurate to incorporate the concept of "socialization", that is, the internalization of international norms, as a better explanatory mechanism:

> The modal transition may be that of instrumental adaptation to norms and gradual internalization as they become legally codified and part of the "normal" routine. Put another way, the EU may have been the initial driver of the reform project. However, significant components of Turkish civil society are now riding along in the passenger seat and are acquiring the ability to take over the wheel (Kubicek, 2005, p. 374).

3.6. Concluding remarks

A dominant historical narrative, championed by influential historians such as Mardin and Heper, has laid a basis for the understanding of the relationship between

the state and civil society in Turkey. The main characteristic of this narrative is the ontological separation between the "center" and "periphery", analogous to the separation between the "state" and "civil society", or a Westernizing and centralizing elite versus the continually suppressed and traditional masses. The separation is justified and explained through the peculiar circumstances in which they were born in the Ottoman Empire, and carried on as a legacy to the Turkish Republic. The malaise of Turkish democracy was inherited from the peculiar roles of the state, as defined by the actions and identities of an increasingly powerful bureaucratic class, and civil society, mostly defined as a non-integrated nobility or a very loosely termed incipient "bourgeoisie". The peculiarity of the Ottoman state was that it lacked a basis of support or legitimacy in society, which in European states was made possible by the integration of different classes in the feudal and later capitalist societies into the center, most pronouncedly through political struggle, compromise and concessions. The one major confrontation that did exist in the Ottoman Empire was between the center and the periphery, as the former attempted to create a centralized state in the face of being surrounded by strong peripheral loyalties, such as religious communities, brotherhoods and guilds, as well as aggressive foreign neighbors. Privileges given to Palace officials as well as a distinct difference on a cultural level with the masses served as the symbolic results of and helped perpetuated the chasm. The peculiar property rights is also said to have prevented the development of an autonomous bourgeoisie vis-à-vis the state, as private property did not exist in de jure terms, as the Sultan had full rights on arable lands outside the cities. Moreover, administrative novelties had the effect of creating a new stratum of notables called the *ayan* who were deeply involved in patronage relations with government officials who secured them these rights. The narratives of Ottoman historians are very similar in that they both posit the uniqueness of the external and internal conditions of the Empire, which include a distrust of a heterogeneous periphery made up of fractions (ethnic and religious enclaves, brotherhoods and religious sects) with their own power bases, the creation of a unique bureaucracy, the growing cultural divide between the center and periphery, and unique property relations, all of which have served to inhibit the

creation of a civil society with an autonomous in-between actor, namely a bourgeoisie between the center and periphery. Nevertheless, it takes the stagnation of expansion, the loss of revenue that this causes, and the inauguration of tax-farming which it necessitates to disrupt a loose-working status quo between the center and periphery, and turn the former into a despotic or "transcendental" state, against which the latter does not act in their own class interest as the aristocracy in Europe, but rather opts for closer relations with the state due to patronage relations engendered by tax-farming.

The remarkable feature of the center-periphery narrative with regard to the Ottoman Empire is that the divide is never bridged. Indeed, a sense is given that it could never have been bridged. For instance, the creation of local notables through tax farming did not create an autonomous bourgeoisie as the notables were too busy securing individual privileges for themselves with relations with the Ottoman bureaucracy. Reform efforts stretching from the first efforts to create a modern army, to the Sened-i Ittifak, the Tanzimat Edict and the creation of the Ottoman Parliament in 1877, are all interpreted as efforts of the Ottoman state to defend itself more effectively against external and internal threats. Even when notables in the periphery have found themselves in close contact with market forces and values, such as in the end of the 19th century, they are said to have failed to become an autonomous force in their own right, as once again they chose to establish patron-client relationships with the Ottoman state elite. Even in Parliamentary politics following the Young Turk Revolution of 1908, the notables chose to back a “party-centered polity”, for want of a civil society with political influence. Everything, including technological progress, is said to have served the prevention of bridging the gap between the center and periphery. Thus, the most important events in the Ottoman Empire’s history are explained through a zero-sum model in which the Ottoman state is continuously pitted against the periphery, the main point being that lacking a Western style state-civil society relationship, no real mediating force could have existed between the state and society.

The Republic of Turkey, under Kemalist rule throughout the single party period, is said to have embraced the tactic of fortifying the state against possible peripheral incursions, and consequently pulling away from the possibility of bridging the great divide, which was broadening as a result of vigorous reforms towards Westernization. Even the 1950 electoral victory of the Democrat Party is seen by Mardin and Heper to not have changed the relation of forces inherited from the Ottoman Empire, as the DP was not seen by these scholars to be true representatives of the periphery. Significantly, while much of the literature analyzing the democratization processes of Turkey counts the 1950 general elections and the success of the DP as an important achievement for forces of the periphery and especially private enterprise, the narrative of the irreparable center-periphery divide and the lack of a genuine, mediating bourgeoisie continue in these accounts as well. So much so that the civil society that did evolve in the period following the single party rule to the 1980 coup is evaluated as a "mutation", in the sense that it was made up of politically and ideologically affiliated civil society organizations manipulated by or acting as the arms of either the state or the political parties or movements of the era.

It is, in fact, the adherence to a liberal-prescriptive definition of civil society as an autonomous field populated by autonomous organizations based on voluntary membership that serves as the yardstick for many analysts of democratization in Turkey. The zero-sum game, a necessary by-product of seeing the history of Turkey through a dichotomous lens, is recalled in research on the subject when accounting for the way in which the state was strengthened against society through the three coups that marked the period. We are told that only with the post-1980 coup period when the doors of Turkey was opened ever wider to the free market economy, and external factors such as membership to the European Union was adopted as a policy, do we see the emergence of an autonomous sphere of CSO activity and advocacy. This account of an instrumentalized civil society prior to the 1980 coup and the rise of a genuine civil society following the coup due in large part to external factors is also displayed in a clear manner in the periodization of the development of the women's movement in Turkey.

Recent academic work on the relationship between the state and civil society, however, while upholding the ontological separation of the state and civil society which harks back to the center-periphery analysis, holds certain analyses which can be seen as relational intrusions and caveats to the dominant narrative. These have included the questioning of the liberal-prescriptive definition of the field of civil society in general and the role of CSOs in particular in the context of the Civil Society Organizations Symposiums, the questioning of the direct correlation between a strong Turkish state and a weak civil society, admitting the existence of a vibrant CSO scene in Turkey before the 1980 coup, the questioning of the adoption of a post-political outlook by CSOs in the 1990s, acceptance of the reality of state selectivity favoring certain CSOs over others, and the questioning of a direct relation drawn between the EU candidacy process and the development of autonomous NGOs.

Such incursions are intimations for the necessity of adopting a relational paradigm instead of a dichotomous one. It is only in this way that simplifications manifested as depictions of what are in fact polyvocal actors such as the state and civil society as homogenous entities can be avoided, and a more accurate understanding of the complexity and overlapping of the public and private spheres can be gleamed.

CHAPTER IV
THE INSTITUTIONALIZATION OF HUMAN RIGHTS

A very clear example of the way in which adopting a relational approach can change the way we observe, understand, interpret and act upon the actions of the "state" can be provided by looking at debates surrounding the institutionalization of human rights throughout the world and in Turkey. Literature regarding the subject tends to focus on the processes by which national human rights institutions have become ubiquitous, especially following the collapse of the Soviet Union, as well as continuing arguments on the types of institutions that can best protect the universal civil, political, economic, social and cultural rights of individuals. The fundamental basis of the issue, however, actually lies in a paradox: the "state" is seen both as the "principal violator" and the "essential protector" of human rights (Donnelly, 2003, p. 35). The state has been regarded as the "principal violator" of human rights by early theorists of liberal democracy (Locke, J.S. Mill, Paine) who have been concerned to limit state power and stop the state's encroachment towards the freedom and property of individuals. In this vein, human rights advocacy groups today are said to work principally to protect individuals from human rights violations perpetrated by "governments" or those "who hold power":

> Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all (HRW, n.d.).

Yet the organizational prowess of the state, its ability to reach into the farthest corners of the world, its production and distribution roles, its monopolization of the legitimate use power (to use Weber's phrase), and its resources have placed the state in the paradoxical role of being *the* actor which can protect human rights more effectively than any other actor. Indeed, the absence of a state seems to be a frightening prospect:

> Precisely because of its political dominance in the contemporary world, however, the state is the central institution available for effectively implementing internationally recognized human rights. "Failed states" such as Somalia suggest that one of the few things as frightening in the contemporary world as an efficiently repressive state is no state at all. Therefore, beyond preventing state-based wrongs, human rights require the state to provide certain (civil, political, economic, social, and cultural) goods, services and opportunities (Donnelly, 2003, pp. 35-36).

This paradoxical situation, whereby the promotion and protection of human rights necessitated action against the state but also cooperation with the state, led to a search for an ideal-type institution which would be strategically placed in order to use state-sponsored resources for human rights advocacy. The answer was found in what is called a "National Human Rights Institution" (NHRI), which can be "described in broad terms as an independent body established by a national government for the specific purpose of advancing and defending human rights at the domestic level", with the expectation that they will "work independently from the government, co-operate with relevant actors at home and abroad and contribute to the implementation of international human rights standards by acting as 'guardians', 'experts' and 'teachers' of human rights" (Pohjolainen, 2006, p. 1). NHRIs, therefore, emerged as an "actor" which could hold a unique position between the state and civil society.

4.1. Definitions and Types of NHRIS

The definition of an NHRI is therefore intimately bound to its placement in a "unique position" between the state and civil society, wherein it is expected to act independently and autonomously from both those actors in the pursuit of promoting

and protecting human rights. The most authoritative text on NHRIs, namely the UN "Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights", concedes that there is no agreed definition for the term. However, it also notes the way in which the initial "flexible" conceptual framework which included "virtually any institution at the national level having a direct or indirect impact on the promotion and protection of human rights", including the judiciary, administrative tribunals, legislative organs, NGOs, legal aid offices and social welfare schemes, was later narrowed down (UN, 1995, p. 6). This more narrow definition was categorized in terms of common functions, such as educational and promotional activities, advice to government on human rights, and investigation of complaints committed by public and private entities. Even then, however, the best general definition that the Handbook could come up with was as follows: "a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights" (1995, p. 6).

Drafted 15 years after the publication of the UN Handbook, the newer "tool-kit" drafted by the successor of the Center for Human Rights, namely OHCHR, used a similar definition, but one with a more normative emphasis: "A "national human rights institution" is an institutional with a constitutional and/or legislative mandate to protect and promote human rights. NHRIs are independent, autonomous institutions that operate at the national level. They are part of the State, are created by law, and are funded by the State" (UNDP-OHCHR, 2010, p. 2). Despite this general definition, but as a result of the normative addition, the OHCHR took-kit was able to differentiate between a greater number of types of national institutions than the UN Handbook. While the latter differentiated between three types (Human Rights Commissions, Specialized Institutions and Ombudsman), the OHCHR differentiated between five. A brief mention of these is important in understanding the very thin line that separates these categories, differentiated according to composition, duties, and powers.

The first important differentiation that needs to be taken into consideration is that between the classic Ombudsman institutions and NHRIs. The former, seen as the predecessor of NHRIs, is nevertheless seen to be different in certain important respects:

> …while national human rights institutions (commissions) were seen as bodies which tried to prevent human rights violations and resorted in particular to the means of education, awareness raising and advice, the ombudsman was generally viewed as an administrative watchdog which adopted reactive rather than proactive approach and concentrated, in particular, on the investigation of citizens' complaints (Pohjolainen, 2006, p. 93 in footnote 92).

The OHCHR tool-kit agrees: "Ombudsman offices that deal only with citizen complaints about maladministration, without an express mandate to address human rights matters are not NHRIs, even though human rights issues may be the underlying issue at stake" (UNDP-OHCHR, 2010, p. 22). As will be seen below, however, this does not mean that modern ombudsman are excluded from the NHRI categorization.

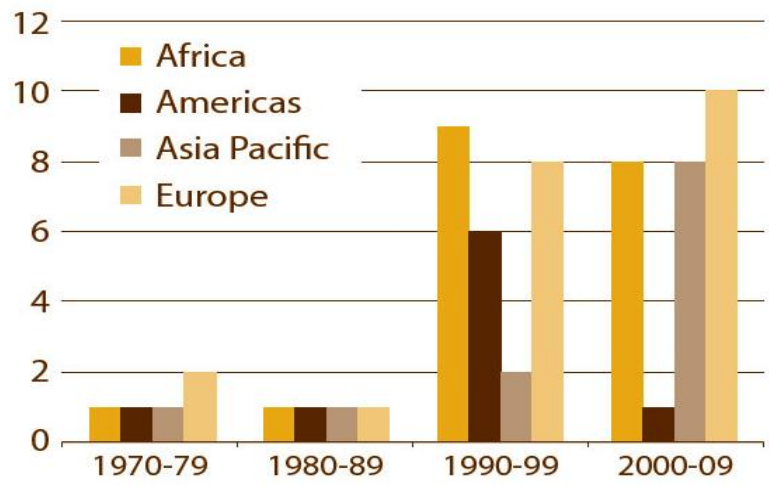
The first type of national institution for the promotion and protection of human rights that can be veritably called a NHRI is the "Human Rights Commissions" (HRCs). As state sponsored institutions with a plurality of members who are also decision makers, HRCs have the power to receive and investigate individual complaints, as well as make recommendations and/or make decisions that are enforceable through the courts (i.e. quasi-jurisdictional competence). HRCs are the most common of the NHRIs, making up 58 percent of the world's NHRIs (UNDP-OHCHR, 2010, p. 22). The next two types of NHRIs are intimately related to Ombudsmans, albeit with human rights mandates that do not exist in classical Ombudsman. The Human Rights Ombudsman Institutions (HROI) are also state sponsored, but in contrast to a HRC, is usually headed by a single member who is also the decision maker. The HROI are also usually given the power to investigate human rights as its core function, along with the ability to receive individual complaints. Most are limited to making recommendations, while recently some have been given authority to go to court when these recommendations have been

rejected. HROIs are said to typically rely on mediation, confidentiality and quick resolution, all of which are characterized as principles inherited from the traditional Ombudsman institutions. The next Ombudsman derived NHRI is what has been called the "Hybrid Institutions" (HI). The same in composition and powers as the HROI, what differentiates the HI is its broad mandate, which encompasses, alongside the protection and promotion of human rights, the prevention of maladministration, corruption and environmental matters. The final two types of NHRIs are the Consultative-advisory bodies and the Institutes-Centers. The former, while state sponsored, is known in some countries to sell their services. Made up of a large member base, consultative-advisory bodes apparently do not have investigative powers, but rather rely on their research and on giving advice to the government. Institutes-Centers, on the other hand, put more effort into research, and their broad membership base does not participate in decision-making, which is usually reserved for the professional staff (UNDP-OHCHR, 2010, pp. 22-26). A table which compares the characteristics of each type of NHRI, including their characteristics, potential strengths and potential challenges, has been drawn up by the tool-kit and can be found in Appendix IV.

4.2. The Spread of NHRIs

In 2000, drafting the report for the International Council on Human Rights Policy entitled "Performance and Legitimacy: National human rights institutions", Richard Carver, a leading scholar in the field of NHRIs, started the report by stating: "These days every country has to have a national human rights commission" (ICHRP, 2000, p. 1). Ten years later, the UNDP-OHCHR toolkit, using the Survey of National Human Rights Institutions conducted in 2009, has shown exactly how fast and how widely NHRIs have been established throughout the world:

Figure 1: Year of NHRI establishment



Source: (OHCHR - UNDP Toolkit, 2010, p.3)

In order to explain the origin of modern NHRIs in the 1970s and make sense of the surge of NHRIs following the 1990s, the influence of the United Nations must be mentioned. The UN was first the platform for the growing consent within the international community in favor of the idea of the institutionalization of human rights in national settings, as well as the meeting ground for the drafting of international standards which would come to define these institutions. Following an initial attempt in the 1970s, the acceptance of these standards by the General Assembly brought great legitimacy and aided the dissemination of NHRIs on an unprecedented scale. Later on, the UN itself became much more than a platform, as its human rights organs and agencies engaged in a concerted effort to encourage and aid countries throughout the world to establish NHRIs. Understanding this process and the role of the UN is crucial in explaining the dynamics involved in the diffusion of NHRIs, and how it has affected state-civil society relations in Turkey.

The activity of the UN in the area of national institutions actually began with the discussion of the issue by the Economic and Social Council (ECOSOC) in 1946, where Member States were invited to aid the work of the Commission on Human

Rights (predecessor of today's Human Rights Council) with local human rights committees within their countries. In 1960, ECOSOC passed a resolution (772 B(XXX) of 25 July 1960) which encouraged the formation or continuation of national institutions, whose contribution to the promotion and protection of human rights was recognized (UN Handbook, 1995, p. 4).

However, "standard-setting" for such institutions by the UN only occurred in the 1970s. In 1978, the Commission on Human Rights organized the "Seminar on National and Local Institutions for the Promotion and Protection of Human Rights", where it approved a set of guidelines. These guidelines included, primarily, promotional activities acting as a source of human rights information for the Government and people of the country and assisting in educating public opinion and furthering awareness and respect for human rights, as well as advisory activities such as deliberating upon and making recommendations regarding "any particular state of affairs that may exist nationally" and on "any questions regarding human rights matters referred to them by the Government" (UN Handbook, 1995, p. 4). Regarding the form of these institutions, the guidelines stressed the need for pluralism in their compositions, regular functioning and accessibility, and "local or regional advisory organs to assist them in discharging their functions"[11] (UN Handbook, 1995, p. 4). The General Assembly endorsed these guidelines, and requested the Secretary-General to submit a detailed report on existing national institutions. This task was fulfilled by the Secretary General throughout the 1980s, during which time national institutions for the promotion and protection of human rights continued to be established. However, the real surge in the creation of such institutions occurred during the 1990s. This was due to the preparation of another set of guidelines, which would involve much more specific criteria than the guidelines drafted in 1978. In 1990, the Commission on Human Rights called for a workshop to be held with the participation of national and regional institutions involved in the promotion and protection of human rights, which would try to find

[11] This is an interesting point, as it doubtless emphasizes the expertise of even more local institutions, a point which is strangely absent from the Paris Principles.

ways in which the effectiveness of national institutions, and their cooperation with UN agencies could be improved (UN Handbook, 1995, pp. 4-5). The first "International Workshop on National Institutions for the Promotion and Protection of Human Rights" was held in Paris from 7 to 9 October 1991. The conclusions from this workshop made up the "Principles relating to the status of national institutions" (or the "Paris Principles"). These principles were first endorsed by the Vienna Declaration and Programme of Action, which was the consensus document arising from the 1993 United Nations Conference on Human Rights in Vienna. Article 36 of the Declaration, drafted on 12 July 1993, states the following:

> 36. The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.
> The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

Nearly 6 months later on 20 December 1993, the Principles were adopted by the General Assembly with resolution number 48/134 (UN, 1995, p. 5). Here the United Nations General Assembly, after stating that it "Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence", goes on to outline the "Principles Relating to the status of National Institutions" under four headings: Competence and Responsibilities; Composition and guarantees of independence and pluralism; Methods of Operation; and Additional Principles Concerning the Status of Commissions with Quasi-judicial Competence. Each of these headings are actually specifications for what an "independent national institution" needs to look like. Rorive succinctly phrases the main tenets of these Principles:

> The "Paris Principles" define several main preconditions for the independent and effective operation of human rights bodies: the independence of the body should be guaranteed by a constitutional or legislative framework; the body should have autonomy from the government and be based on pluralism; the body should have a broad mandate, adequate powers of investigation, and sufficient resources (2009, p. 169).

While the Paris Principles will be discussed in more detail below, it would suffice to say at this point that they were an important impetus for the spread of NHRIs throughout the world, and brought the UN system fervently behind the project of contributing to this spread. Indeed, shortly before the passing of the General Assembly Resolution adopting the Paris Principles, a second International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Tunis from 13 to 17 December 1993, hosting more than 28 institutions from around the world (UN, 1995, p. 6). It was here, "as part of an effort to improve cooperative relationships" between states, national institutions and the UN Centre for Human Rights that the Coordinating Committee was established. Composed of national institutions from Africa, Asia, Australasia, Europe, Latin America and North America, the Coordinating Committee was mandated with monitoring and ensuring the follow-up to the recommendations adopted at the Tunis Workshop, which included a call to national institutions to ensure that their status and activities were consistent with the Paris Principles (UN, 1995, pp. 6, 15). The International Coordinating Committee (ICC) would later become an important actor in its own right with regard to NHRIs, especially due to its accreditation system (discussed below).

Following the adoption of the Paris Principles, the UN, especially through the newly created OHCHR[12], as well as its agencies (especially the UNDP), have been heavily involved in the promotion of the spread of NHRIs. Undoubtedly, such support for NHRIs rode on the wave of the increasing human rights based discourse and the strengthening of international human rights mechanisms following the end of the Cold War, which effected a "global wave of democratization" in the domestic

[12] Established by General Assembly Resolution numbered 48/141 and dated 20 December 1993

agendas of many countries worldwide (Cardenas, 2003, pp. 27-28). Pointing to the "crucial role" played by the UN in creating and strengthening NHRIs, Cardenas (2003) mentions four mechanisms through which this was made possible, including standard setting, capacity-building, network facilitating and membership granting.

Standard-setting, it can be said, was the initial instrument, born out of repeated efforts to map out universal guidelines for the protection of human rights in the domestic sphere with (preferably) autonomous national institutions. Defining and demarcating such guidelines gave the UN a concrete tool to work with, to deliberate with states, and to build upon. Cardenas argues that the 1978 guidelines, adopted thanks to the proliferation of international human rights mechanisms which necessitated domestic counterparts as well as the need to alleviate the burden on the UN Human Rights Commission, were built upon by the Paris Principles. The latter is said to have outlined "a more ambitious role for NHRIs as autonomous and pluralistic institutions", and to have adopted an "expanded agenda" (2003, p. 29). However, while the setting of standards have been useful in putting a consensus text in the hands of the UN with which it could then work with in order to spread NHRIs throughout the world, an evaluation of the Paris Principles as having improved on these guidelines in certain respects cannot be upheld. Pohjolainen, for instance, notes that while the most important change from the 1978 guidelines was a "considerable clarification of the concept of national institution" which narrowed it down to the "*key* domestic body" with a general competence rather than "all governmental and public bodies", she does mention one "significant shortcoming" of the Paris Principles in comparison to the guidelines. This is the "complaints-handling" function, introduced as an *optional* task in the Paris Principles. The change is explained by the author with reference to the sensitive nature of investigative and supervisory powers of national institutions, and the surmise as to the difficulty of introducing "international standards which urged governments to create new institutions or equip the existing ones with the authority to receive human rights complaints" (2006, p. 60). Moreover, it is also not at all clear how the Paris Principles narrowed the definition of NHRIs by positing it as a "key" institution, when the UN Handbook, drafted shortly after the Principles, admit to

failing to formulate a concrete definition of NHRIs (see above), and when one of the most recent resolutions adopted by the UN General Assembly on the matter:

> Encourages Member States:
> (a) To consider the creation or the strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions;
> (b) To develop, where appropriate, mechanisms of cooperation between these institutions, where they exist, in order to coordinate their action, strengthen their achievements and enable the exchange of lessons learned[13]

The second contribution of the UN has been "capacity-building", which includes technical assistance with expertise and training, workshops and drafting legislation. The OHCHR, in conjunction with the UNDP, have assisted 25 countries around the world in their efforts of creating an NHRI, such as in Rwanda in 1999 (Cardenas, 2003, p. 30). Network-facilitating is yet another way in which the UN has put its support behind the creation of NHRIs, seen as a recent strategy dating back to the 1990s, involving the promotion of international and regional networks of NHRIs, international meetings, and the creation of a coordinating committee (Cardenas, 2003, p. 33). Moreover, a special post was created within the auspices of the UN, namely the "Special Adviser to the High Commissioner for Human Rights on National Institutions, Regional Arrangements and Preventive Strategies in July 1995. According to Pohjolainen, this "marked the beginning of a new and proactive phase in the UN's work on national institutions", and enabled a much more "systematic and vigorous" promotion of Paris Principles institutions (2006, p. 68). The Special Adviser was accountable only to the High Commissioner for Human Rights, and this allowed flexibility, in that governments and other parties could request expert advice directly from the Special Adviser, thus circumventing the slow technical cooperation procedure (Pohjolainen, 2006, p. 68). Responses could also be accelerated by this new arrangement, as informal consultations were made possible. Pohjolainen notes that in Africa, nineteen out of twenty-four national

[13] Resolution 63/169 entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights".

institutions in operation or being formed in 2000 had consulted the Special Adviser (Pohjolainen, 2006, p. 68).

Moreover, the Centre for Human Rights, which later became the High Commissioner for Human Rights in 1997, held the establishment of NHRIs as one of the most important aims during the term of the first Commissioner for Human rights, Jose Ayala-Lasso, and was brought into the spotlight even further during the second High Commissioner, Mary Robinson (Pohjolainen, 2006, pp. 68-69). Mary Robinson announced her plans to "effectively bring this work into the mainstream of activities" of the OHCHR (quoted in Pohjolainen, 2006, p. 69). Thus, a National Institutions Team was established under the OHCHR to support the work of the Special Adviser (Pohjolainen, 2006, p. 69). Indeed, the UNDP-OHCHR toolkit notes that within the UN system, these two agencies have been increasingly involved in supporting NHRIs, and that "For both organizations, engagement with NHRIs has become a priority area" (2010, pp. 7-8).

The final way in which the UN is said to have contributed to the spread of NHRIs is with "membership-granting", whereby the UN began to grant national institutions official international status which enabled NHRIs to formally participate within certain UN meetings (Cardenas, 2003, pp. 33-34). In 1999, the UN Commission on Human Rights decided that NHRIs could participate in relevant meetings with speaking time allotted to them, thus paving the way for them to be treated as "autonomous and enduring actors" (Cardenas, 2003, p. 34). This ability was intertwined with the working of the ICC; a point which Cardenas does not mention. As stated above, the ICC was first established in the second International Workshop on National Institutions held in Tunis in 1993. It took until 1998, however, to develop the rules of procedures for the ICC, enlarging its members to 16, with four from each geographical region (Americas, Africa, Asia-Pacific and Europe), while also resolving to create a process for accrediting institutions. It was in these Rules of Procedure where membership in the ICC was tied to compliance with the Paris Principles, a conditionality that was emulated by regional NHRI organizations such as the Asia-Pacific Forum of National Human Rights Institutions (APF)

(Pohjolainen, 2006, p. 11). In 2005, in resolution number 2005/74, the Commission on Human Rights reaffirmed the importance of establishing and strengthening NHRIs consistent with the Paris Principles and accorded speaking rights under all its agenda items to NHRIs that were accredited as "A" status (OHCHR training manual, 2010, p. 7). The ICC was incorporated under Swiss Law in 2008 as a legal entity, adopting a Statute. A Subcommittee was established under the ICC to review and analyze accreditation applications by NHRIs, and award the "A", "B" or "C" status accreditations. An "A" status accreditation is given to NHRIs that are deemed to be in full compliance with the Paris Principles, and are awarded with the ability to participate fully in the work and meetings of National institutions as voting members, hold office in the ICC Bureau or any Sub-Committee, and participate in Human Rights Council (HRC) sessions and take the floor under any agenda item, as foreseen in the 2005 Resolution. "B" Status institutions are those termed "Observer Members", and this status is given to those NHRIs that do not fully comply with the Paris Principles or have not yet submitted the documentation for consideration. These "may participate" as observers in the work and meetings of national institutions, but they cannot vote or hold office within the ICC Bureau or its Sub-Committees, and cannot take the floor in the HRC. The "C" Status is simply termed as "non-compliant with the Paris Principles", and has none of the rights or privileges that are or may be afforded to the first two levels (UNDP-OHCHR, 2010, p. 256). In effect, the accreditation process serves as a "name and shame" game at an international level, in which a newly created or transformed NHRI is evaluated by and before its international counterparts. Nevertheless, even if a NHRI receives the worst score, "An immediate benefit of the accreditation process is the issuance of recommendations by the ICC Sub-Committee on Accreditation, which in turn provide a solid basis for future efforts to further strengthen the institution and engage the national authorities in this" (UNDP-OHCHR, 2010, p. 157). Pulling NHRIs into an international community constitutes the real power behind the "membership-granting" contribution of the UN.

Recently, the General Assembly once again put its weight behind the NHRIs with two resolutions dated 20 March 2009. Resolution 63/172 underlined the importance

of the development of effective, independent and pluralistic NHRIs in line with the Paris Principles, and encouraged NHRIs to seek accreditation status through the ICC. Resolution 63/169 emphasized the importance of the autonomy and independence of NHRIs, and encouraged states to enhance cooperation between institutions such as the ombudsman, mediator and other NHRIs (UNDP-OHCHR, 2010, p. 27).

Support for the creation and proliferation of NHRIs has not been coming solely from the OHCHR and UNDP. Other UN agencies, funds and programs have also been active in their support for NHRIs, as well as other intergovernmental organizations. Most importantly, national institutions in compliance with the Paris Principles have been given increasing roles in the implementation of international treaty obligations, being specifically mentioned in the general comments of UN treaty bodies tasked with monitoring the compliance of States-parties to international instruments. For instance, the Committee on the Convention on Elimination of Racial Discrimination (CERD) had invited States-Parties, as early as 1993, to set up national institutions in compliance with the Paris Principles. In 1998 the Committee on Economic, Social and Cultural Rights called for the mandate of NHRIs to include appropriate attention to economic social and cultural rights, while the Committee on the Rights of the Child considered the establishment of national institutions part of the treaty obligations (Pohjolainen, 2006, p. 11). The Optional protocol to the International Covenant Against Torture, adopted in December 2002, also requires that States-parties create national mechanisms for the prevention of torture, giving "due consideration" to the Paris Principles (Pohjolainen, 2006, p. 11).

Other actors in the international field have been as enthusiastic in their support for NHRIs as the treaty bodies. Pegram, for instance, notes the support of the Commonwealth for national institutions based on the Paris Principles, as well as the support of the International Monetary Fund (IMF) and the World Bank (WB) to ombudsman institutions in the framework of "good governance" (2010, p. 740). Moreover, international civil society organizations, such as Amnesty International

(AI) and Human Rights Watch (HRW) "have made efforts to incorporate an NHRI focus in their work". Regional mechanisms have also been active in their support for the establishment of NHRIs in their Member States, such as the Council of Europe, which has advocated the creation of NHRIs ever since the mid-1970s, and the Organization of American States which promoted the establishment of NHRIs since the mid-1990s (Pegram, 2010, pp. 742-744).

The European Union (EU) has also been an important element in the increasing legitimacy of NHRIs. The 1997 Amsterdam Treaty has inserted Article 13 to the Treaty Establishing the European Community (amended by the Lisbon Treaty to become Article 19 of the Treaty on the Functioning of the European Union) which states:

> the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The implementation of this principle, that is, a concrete obligation to act for Member States, came with the adoption of two EU Directives in 2000, namely the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive) and the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive). Building on the experiences of the implementation of the 1976 Gender Equal Treatment Directive (Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions), which placed emphasis on eliminating discrimination against women in employment, the Racial Equality Directive and the Employment Equality Directives made room for effective remedies to discrimination and enforcement/implementation of the provisions of the Directives (Rorive, 2009, pp. 141-142). This seems to be the reasoning behind the inclusion of

the heading under Chapter III of the Racial Equality Directive entitled "Bodies for the Promotion of Equal Treatment", which states:

> 1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
> 2. Member States shall ensure that the competences of these bodies include:
> …providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
> conducting independent surveys concerning discrimination,
> publishing independent reports and making recommendations on any issue relating to such discrimination.

However, although the Directive calls for "independent assistance", "independent surveys" and "independent reports", no real clarification on what such independence entails is given.

In sum, such widespread global and regional support has had a profound influence on the legitimacy commanded by the NHRIs, and has naturalized their creation throughout the world:

> The fact that the Paris Principles have become widely known in the past ten years and are now accepted as a benchmark for governmental human rights bodies implies that the concept of national human rights institutions has become something of a "norm". To use theoretical terms, the critical threshold of acceptance, which was reached already in Vienna in 1993, has gradually led to such a broad acceptance of the concept of national institutions that, by the late 1990s, such institutions are almost taken for granted (Pohjolainen, 2006, p. 13).

4.3. The Paris Principles

In trying to understand not only the rationale behind the Paris Principles, but also the actual way in which these Principles, although non-binding, were used by the UN and especially by the UNDP and the OHCHR to aid in the spreading of NHRIs throughout the world, it is necessary to see how the Principles were interpreted by

these institutions, both as standards to promote an ideal-type of NHRI born out of an uncritical acceptance of the ontological separation of the state and civil society, and at the same time as guiding principles prone to broad interpretation, but born out of a pragmatic need to fulfill its goal in spreading the institutions worldwide. Using the legitimacy procured by these Principles derived from the international community's consensus support, which in turn was made possible due to the broad formulation of its articles and the specific emphasis on the leeway afforded to countries in their choice of the specific form of NHRI, the OHCHR uses a two-pronged approach in its interpretation of these principles. On the one hand, the UN was apparently conscious of the need to refrain from narrow interpretations of the Principles which would doubtless harm the appeal of NHRIs in countries that do not adhere to certain procedural liberal-democratic principles. This is the reason the UN seems to take its chances to water-down the Principles when such interpretation is seen as plausible, and does not miss the opportunity to propose more viable opportunities to comply with the Principles. In fact, the broad nature of the Paris Principles that makes such alternative interpretation possible has been commended as a strength of the Principles: "The potential significance of NHRIs for human rights reform also is evident in their scope, particularly their broad and flexible mandate" (Cardenas, 2003, p. 25). Pohjolainen notes, for instance, that the ICC has opened its membership to national institutions which could not be considered to be in line with the Paris Principles, such as a number of ombudsmen in Europe and in Latin America, due to pragmatic reasons. The broad way in which the Principles were drafted, therefore, turns out to be an advantage:

> The fact that governments have the freedom to tailor their national institutions according to their domestic context has undoubtedly been one of the reasons for the success of national institutions. The flexibility of the concept has evidently opened doors also to such countries where international human rights advocates have not always been welcome and helped to accommodate the new institutional structure in different legal and political environments. One could therefore claim that the fact that the concept of national institutions is broad is not only a weakness (Pohjolainen, 2006, p. 15).

On the other hand, the UN is also seen not to lose sight of an ideal-type Paris Principles, as seen in its support for the equation of the effective application of the Paris Principles with engrained democratic institutions, and vice versa, thus painting an ideal image of democracy to which it ascribes:

> NHRIs that comply with the Paris Principles are cornerstones of national human rights protection, and can be a force for making international human rights obligations a national reality. NHRIs are therefore central elements of national human rights protection systems. They work hand in hand with other parts of the State and with social actors: these include the executive, and independent judiciary, law enforcement agencies, effective and representative legislative bodies, strong and dynamic civil society organizations, a free press, and education systems containing human rights programmes at all level (UNDP-OHCHR, 2010, p. 4).

The UNDP-OHCHR tool-kit breaks down the Paris Principles into six main criteria which are needed to be fulfilled in order for a NHRI to be considered "successful", including: A broad mandate, based on universal human rights standards; autonomy from government; independence guaranteed by statute or constitution; pluralism including through membership and/or effective cooperation; adequate resources; and adequate powers of investigation (2010, p. 242)[14].

The first principle, namely the requirement that a NHRI has a "broad mandate" is stipulated in the second article of the Paris Principles, which states: "A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence". What is to be understood by a "broad mandate", according to the toolkit, is the "dual responsibility to both promote and protect human rights" (UNDP-OHCHR, 2010, p. 243). While "promotion" includes measures to enable individuals to understand and respect human rights (such as public education, reports, awareness raising activities, etc.), the "protection" side involves effective mechanisms to investigate and monitor human rights "situations" (UNDP-OHCHR,

[14] This summary is almost identical to that proposed by Rorive, as quoted above.

2010, p. 243). Article 3 of the Paris Principles is helpful in concretizing which responsibilities NHRIs should have to realize this broad mandate. Among the activities listed are: the submission and publication of advisory opinions, recommendations, proposals and reports ***on any matter*** related to the promotion and protection of human rights; harmonization of national legislation and practices with international human rights instruments; ratification of these instruments and their implementation; contribution to reports which states are required to submit to UN bodies; cooperation with UN organizations as well as regional institutions and other national institutions; assisting and taking part in the development of education and research programs in human rights; and increasing public awareness regarding all forms of racial discrimination.

In carrying out these activities, the Paris Principles also point to "Methods of operation", in which it is underlined that NHRIs should not be limited to Government submissions and that they should be able to consider any question falling under its competence without referral to a higher authority. The second paragraph under this heading notes that NHRIs shall "Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence". Interestingly, however, the toolkit, while stressing the necessity for the NHRI to have the power to provide advice on its own initiative, nevertheless adds certain points regarding what should be understood to be included in the responsibility regarding advice on legislation and human rights violations. One additional point, for instance, states the need to include the following: "Monitor and report on human rights issues generally and on the situation of detained individuals in particular" (2010, p. 243). No mention is made, however, regarding detained individuals in the Paris Principles. Several other points actually water-down many of the responsibilities in the Paris Principles. Consider the following statements. The toolkit notes that while the NHRI should receive, investigate and issue opinions and recommendations regarding alleged human rights violations, it states, in a parenthesis: "although it may not include the specific power to receive individual human rights complaints". Moreover, the toolkit notes that these requirements do not constitute a definitive list, but rather:

> …they constitute the minimum or basic level of responsibilities. That said, the Principles have not been interpreted as requiring that an institution actually carry out all of the listed responsibilities, but rather as requiring that there be no statutory or constitutional limitations that would prevent an institution from engaging in them if it chose to do so (UNDP-OHCHR, 2010, p. 243).

Furthermore, while it is conceded that a "broad mandate" would require that NHRIs be engaged with work regarding both civil and political rights as well as economic, social and cultural rights, noting that an NHRI may not be authorized to receive complaints regarding the latter rights, and that some institutions have mandates that related to one type of human rights violation, the toolkit, drafted by the most authoritative bodies on the issue, notes: "Such limitations do not, in themselves, mean that the NHRI is not in conformity with the Paris Principles" (UNDP-OHCHR, 2010, pp. 243-244). Such reservations, presumably, are efforts to encompass a more variegated set of institutions and mandates throughout the world, in order to aid in the spread of the NHRI concept. However, having to water down certain principles for the purpose at hand, that is, of writing a tool-kit to encourage and aid governments to create such institutions, shows the ephemeral character of universal "standards" once faced with the political exigencies of countries. This is a point which needs to be born in mind when evaluating criticisms against efforts to institutionalize human rights in Turkey.

The second principle advanced by the Paris Principles is that of autonomy. The toolkit is very vague regarding the difference it draws between autonomy and independence. In fact, it says that the two are "intrinsically" related, and the example it gives of a violation of autonomy is the threat by governments to restrict access to funding, an issue dealt in more detail under the independence heading (UNDP-OHCHR, 2010, pp. 246-247). For all intents and purposes, separating these two is not very helpful. The toolkit, it seems, has done so for the sole purpose of stating an answer for the question most succinctly posed as:

> How can NHRIs, which are usually set up by the state, funded by the state, given powers and a mandate by the state, and financially accountable to the

> state, at the same time be visibly and clearly independent of the state (Smith, 2006, p. 912)

to which it replies by noting that the courts, despite being funded by the state, are autonomous nevertheless (UNDP-OHCHR, 2010, p. 247).

A bigger space for the discussion of the principle of independence is given in the toolkit, which, together with autonomy, is actually used in literature regarding NHRI standards as the all-encompassing principle. For instance, in differentiating four levels of independence in terms of a NHRIs relationship with the state, Anne Smith (2006, p. 913) notes legal and operational autonomy, financial autonomy, independence with regard to appointment and dismissal procedures, and independence concerning pluralism and composition. The toolkit also places the guarantee by a constitution or legislation within the independence principle, as it is said that such a guarantee contributes to the permanence of the institution due to the rationalization that the constitution or primary law of a state is more difficult to amend than say, an executive order. Moreover, it is argued that such legislation would improve visibility and transparency, due to the fact that the public could refer to a text in which the mandate of the institution is codified, and which therefore presents "defined expectations" (UNDP-OHCHR, 2010, p. 247). Another sub-category under "independence" is "independence in operation and in funding". Operationally, it is said that the institutions should be able to draft its own procedural rules that cannot be changed by an external authority, and that the recommendations, reports or decisions should not require the approval of such an authority. Financial independence, on the other hand, is defined as the requirement that the NHRI is accorded sufficient funding for it to have its own premises and staff, which would contribute to its independence from government. Independence is also said to entail the independence and transparency with regard to the terms and conditions that govern appointment and the dismissal of members of the NHRI, including the method of appointment, the criteria for appointment, the duration of appointment and possibility of reappointment, and the dismissal process (UNDP-OHCHR, 2010, p. 249). These have obviously been placed as safeguards against favoritism in hiring and arbitrary dismissals. However, the section which outlines

the standards for the composition of NHRIs and the appointment process in the Paris Principles entitled "Composition and guarantees of independence and pluralism", does not mention the issue of dismissals. Instead, the most relevant article under this heading, article 3, states the following:

> 3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be affected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of institution's membership is ensured.

Rather, the issue of dismissal is only dealt with by the General Observations of the ICC Sub-committee, in which Article 2.9 states the following:

> Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRIs.
> a) The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;
> b) Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;
> c) Dismissal should not be allowed based on solely the discretion of appointing authorities.

Finally, an additional ICC criterion is inserted into the principle of "Independence", namely that of "immunity", which is once again missing from the Paris Principles but is mentioned under Article 2.5 of the General Observations of the ICC Sub-committee: "It is strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI". The toolkit, however, even further broadens this ICC criterion by stating that there are two types of immunity: the first being the immunity as stated in the General Observations, namely that protecting legal liability for actions performed under the scope of the authority of the NHRI, whereas the second type is that of "general immunity", which would "protect NHRI members and staff from malicious accusations, and from using such accusations as a pretext to oust a member or harass a staff person" (UNDP-OHCHR, 2010, p. 250).

The fourth principle is that of pluralism, "the ultimate purpose" of which is said to be to ensure that NHRIs establish effective cooperation with other actors in government and in society, and which, if applied, is promised to enhance an institution's independence, credibility and effectiveness (UNDP-OHCHR, 2010, p. 252). The related Paris Principle reserves pluralism as the necessary requirement for the composition of the national institutions and the appointment of its members, and especially the inclusion of actors which will enable effective cooperation in the promotion and protection of human rights, such as CSOs working in the field of human rights, along with trade unions, social and professional organizations, representatives of "trends in philosophical or religious thought", universities and qualified experts, members of parliament, and government departments (Paris Principles, Article 1 under "Composition and guarantees of independence and pluralism"). The last slot in the list put forward by the Paris Principles goes to "Government department", albeit with the provision that if representatives of the Government are included they should only act in an advisory capacity. The toolkit, however, once again chooses to interpret the Principles broadly:

> While this section focuses largely on pluralism in membership, it should be remembered that pluralism can also be reflected in the work of the NHRI, for example: choice of trainers and participants for workshops, etc. and the thematic areas chosen for focus in research projects, seminars and in public education materials (UNDP-OHCHR, 2010, p. 252).

While on the face of it this broad interpretation extracts an additional demand from the pluralism principle, it is in fact a pragmatic move deriving from the acknowledgment that pluralism in composition may not be necessary and feasible "In countries with highly diverse populations". Rather on insisting on this point, the toolkit makes do with the ability of the NHRI, and in particular its composition, to "facilitate cooperation and interaction with society as whole, and especially for vulnerable groups" (UNDP-OHCHR, 2010, p. 252).

The final two principles are that of "Adequate Resources" and "Adequate Powers of Investigation", both intimately related to the larger question of the way in which the national institution in question will be guaranteed autonomy. The prerequisite for

adequate resources is financial autonomy, a point strongly highlighted by the text of the Paris Principles in Article 2 under "Composition and guarantees of independence and pluralism:

> 2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

Again, however, the toolkit notes that while in some countries the Parliament is responsible for reviewing and approving the budgetary allotment, in others it is the Mınister with substantive responsibility for the NHRI that puts forward the budget. While the former option is "the preferable scenario", it is implied that the latter option may also be within the principles. It is also added that the funding for a NHRI should be secure, that is, immune from arbitrary withdrawal for taking a decision against the Government. "Adequate Powers of Investigation" also starts with the necessity to be autonomous, especially with regard to the power to investigate any issue regardless of whether it is submitted by Government. The relevant article from the Paris Principles, under the heading of "Methods of Operation", is as follows:

> Within the framework of its operation, the national institution shall:
> Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
> Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.

Once again, however, the toolkit elaborates on the "implications" of what is written in these two paragraphs. First, it is said that the authority to "hear any person" implies that NHRIs should be able to compel a person to give evidence or testimony as well as to protect individuals from potential retaliation following such testimony. Moreover, obtaining any information and any documents necessary is said to imply that the institution be given the authority to compel the production of the necessary documents as well as to "use or access search and seizure powers, as well as to

apply penalties to those refusing to produce, for destroying or for falsifying information and documents" (UNDP-OHCHR, 2010, p. 255). These are very broad implications, as search and seizure powers generally involves legal control of some kind of law enforcement units, while it is not at all clear what is meant by "penalties"; how can an administrative unit penalize another administrative unit for instance? Following these sweeping "implications", however, the toolkit does note that such powers are not necessary in order to comply with the Paris Principles, but that they are considered "best practice" (UNDP-OHCHR, 2010, p. 255). Examples of NHRIs with such powers are not given, however.

As can be seen, the Paris Principles are dynamic. There have been additions and subtractions from the actual text. These have been a compromise between a prescriptive project of using NHRIs to promote liberal-democracy, and pragmatism in order to make sure that the first steps to disseminate NHRIs is taken. The UNDP-OHCHR are necessarily forced into finding this compromise, and they do this by at times watering down the premises of the relevant Paris Principle, but coming back with alternatives that could reinsert some of the authority of the principle in question. At other times, it uses an extra ICC principle to elaborate and exacerbate the principle in question.

4.4. Initial Efforts to Institutionalize Human Rights in Turkey

Turkey's efforts to institutionalize human rights began in the early 1990s, and have continued for over two decades, resulting in the ratification of the Law on the Human Rights Institution of Turkey (HRIT) by the Parliament on 21 June 2012. Putting aside the discussion on whether the HRIT conforms to the Paris Principles for now, it is generally agreed that Turkey's efforts to institutionalize human rights have never created a national institution that would conform to the Paris Principles of autonomy and independence (Aydın, 2010, p. 110). In its 2008 Turkey Progress Report, the EU Commission stated:

> The institutional framework for human rights promotion and enforcement does not meet the independence requirement and lacks financial autonomy and transparency…Overall, the institutions for the promotion and enforcement of human rights lack independence and resources (par. 12-13).

This view has also been accepted, as we shall see, by the Government, which has used it to justify the creation of the HRIT. Suffice to say at this point, however, that there is no institution that has obtained accreditation from the ICC in Turkey (Dervişoğlu, 2010, p. 99).

A brief outline of the fundamental institutions in Turkey, and their principle contradictions with the Paris Principles is necessary in order to understand the recent historical background to the HRIT, as well as the reasons why human rights advocacy CSOs in Turkey have been suspicious of efforts by the state to institutionalize human rights.

The first attempt was made with the establishment of the Parliamentary Commission for the Assessment of Human Rights established with law number 3686 dated 5/12/1990. The Parliament website notes that the creation of a commission to function at the level of Parliament on the issue of human rights violations came onto the agenda of the Parliament following Turkey's application for full membership to the European Union, and the Law proposal was sent to the Parliament Presidency with the signatures of members of parliament of all political parties represented in the Parliament. Article 4 of the Law lists the duties of the Commission as follows:

> a) Monitor developments on internationally accepted human rights,
> b) To identify the necessary amendment in order to ensure the harmonization of Turkey's constitution and other national legislation and practices with international treaties in the field of human rights to which Turkey is party, and to suggest legal changes for this purpose,
> c) (Amended: 1/12/2011-6253/41) To review draft laws, law proposals and governmental decrees having the force of law that are referred by the Turkish Grand National Assembly, to present views and recommendations concerning issues on the agenda of the commissions of the Turkish Grand National Assembly upon request,

> d) To assess the harmonization of Turkey's practices in the field of human rights with the international treaties to which it is party, the Constitution and domestic legislation and to conduct research and suggest developments and solutions for this purpose,
> e) To review applications regarding human rights violations and to convey them to the relevant authorities if necessary,
> f) To review human rights violations in foreign countries when necessary, and to present these violations to the attention of the members of parliament of the country concerned directly or via available parliamentary forums,
> g) To prepare an annual report covering activities conducted, the results achieved, as well as respect for and actions in human rights both in the domestic and international sphere.[15]

The Commission is still active in nearly every point listed in its mandate. However, the "broad mandate" requirement by the Paris Principles which necessitates that institutions be able to present its views without being limited to Government submissions and that they should be able to consider any question falling under its competence without referral to a higher authority is not fulfilled, as sub-article (c) makes such recommendations dependent upon the request of the Parliament. Moreover, "promotional" activities in human rights, such as awareness-raising, training, etc. are not included in the list of duties (Dervişoğlu, 2010, p. 101).

Neither is the composition of the Commission in line with the pluralism principle, as it is made up solely of members of parliament in ratio to the number of seats held by their respective political parties (or by independent representatives) in the Parliament. Last but not least, the Commission does not have an autonomous standing from the Parliament, nor does it have its own independent budget.

Following the establishment of the Parliamentary Commission for the Assessment of Human Rights, in 1993 -the year in which the Vienna World Conference on Human Rights was held- the "Governmental Decree on the Establishment and Duties of the Human Rights Institution" was passed. The purpose of the Governmental Decree was stated in Article 1 as being the protection and development of human rights, the institutionalization of human rights, the

[15] My own translation of the original text

monitoring of developments in human rights at the national and international level, the preparation of training suggestions in human rights, to identify human rights violations and to suggest solutions. It envisaged the creation of a High Committee of Human Rights and an Undersecretariat of Human Rights (Article 3). While the former was to be comprised of seven members led by the Prime Minister or a State Minister Responsible for the Human Rights Institutions which the Prime Minister would assign, the Undersecretariat of Human Rights was to be responsible for the secretariat services of the Committee (Article 4). The Committee was to be chosen by various institutions, including the Commission for the Assessment of Human Rights, the Council of Ministers, the Ministry of Justice, the Inter-University Board, the Union of Turkish Bar Associations, and the Turkish Medical Association (Article 5). Moreover, the Governmental Decree envisioned the creation of an Advisory Council, which would "evaluate" the regulations, implementation and developments in human rights, as well as draft its recommendations in a report which would then be "taken into consideration" in the work of the Human Rights Institution. Although the High Committee was to be made up of a number of governmental and non-governmental representatives and would therefore arguably have been "pluralistic", the Advisory Council would have been even more so, with members from the media, employers and workers confederations, voluntary associations, and even students (Article 19).

The High Committee was to have the ability to receive complaints regarding human rights violations, conduct research regarding violations without recourse to permission from a higher authority, to initiate legal proceedings against those who did not provide information and documents with regard to violation claims necessary for the assessment of the claims, to prepare reports regarding violations occurring in the international arena, and "to make other decisions regarding human rights it deems to be relevant" (Article 8). Combined with the duties of the Institution as a whole stipulated in Article 2 which includes such tasks as the harmonization of domestic standards with international standards and the development of social awareness regarding human rights, the Governmental Decree

on the Establishment and Duties of the Human Rights Institution was very much in line with the "broad mandate" principle.

The Governmental Decree was brought in front of the Constitutional Court by the Motherland Party, which at the time was the opposition party in Parliament, with the claim that such an institution could not exist as its actions would be an intervention to the judiciary due to the fact that violations of human rights came from the executive and that the control of the executive was the duty of the courts (Altıparmak, 2007, p. 1). When looking at the decision, however, it can be seen that the Constitutional Court did not use this premise to decide to annul the Governmental Decree. Instead, noting how the Constitutional Court need not be limited to the reasons proposed by those bringing the case to court, the judges decided that the Law on which the Governmental Decree had based itself on (Law number 3911) had been annulled by the Constitutional Court, thereby leaving the Governmental Decree without a legal basis (Decision date 6.10.1993 number E. 1993/39 and K. 1993/37). Nevertheless, the "separation of powers" argument was repeated by opposition political parties against other attempts at creating national institutions in the future (discussed below).

The attempts of the executive to create some manner or form of national institution dealing with human rights were not easily discouraged, however. Piecemeal efforts were made in the late 1990s, neatly summarized by Altıparmak and Üçpınar (2008) in a report drafted for the Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı – TİHV) entitled “Common Reasoning in the Prevention of Torture; the Optional Protocol and the Evaluation of Turkey’s Practices in Site Visits”. In 1997, a “Human Rights Coordination Supreme Board” composed of the Undersecretaries of the Prime Ministry, Ministry of Justice, Ministry of Interior, and Foreign Ministry and presided over by a State Minister mandated to deal with human rights related issues was established via Prime Ministerial Circular. In 1998, the Human Rights Education Ten Year National Committee was established as an advisory committee in order to work towards fulfilling the tasks set out in the UN General Assembly Resolution of 1994 numbered 49/184 on the “United Nations

Decade for Human Rights Education". It was to have 20 members, including representatives from various ministries, six representatives from "voluntary associations active in the field of human rights" as well as five academicians known for their work in this area. An interesting point to emphasize is that while the ministry representatives were to be selected by their respective institutions, Article 4 of the "Regulation Regarding the Human Rights Education Ten Year National Committee" stipulated that the academicians and the CSOs to send representatives would be selected by the Human Rights Coordination Supreme Board. Giving the administration the power to select non-state members to national institutions dealing with human rights has become a regular practice ever since, until at least the establishment of the HRIT.

In the year 2000, the Provincial and District Human Rights Boards (PHRBs) were established in 81 provinces and over 850 districts throughout Turkey. Headed by the Governor, vice governor or district governor in charge of the province or district, it was the most ambitious effort to institutionalize human rights, and one, it will be argued, with the most potential of effecting real change on the ground, despite widespread (and mostly salient) criticisms from human rights advocacy groups that they were not in line with the Paris Principles.

Before delving into the PHRBs, however, it is necessary to mention yet another full-fledged effort by the Government to institutionalize human rights and coordinate the activities of existing bodies under the umbrella of the Prime Ministry, namely Law Number 4643 dated 12/4/2001 which amended Law number 3056 dated 10/10/1984 establishing the Prime Ministry. The amendments effected by Law Number 4643 stipulated the establishment of a Human Rights Presidency, a High Committee for Human Rights, a Human Rights Advisory Committee and Delegations to Review Claims Regarding Human Rights Violations. The failure of these institutions, especially the Human Rights Advisory Committee, to work autonomously from the Government has been an important indication of what can go wrong if such autonomy is not guaranteed in law, as well as a continuing

reminder for most human rights advocacy of the continuing existence of a "strong state tradition" in Turkey.

The Human Rights Presidency was established as a Main Service Unit under the Prime Ministry. In Turkish Administrative Law, such units are subsidiary units to the Ministry in which they are founded, and do not have an autonomous budget or any independent competences (Günday, 2011, pp. 395-396). Nevertheless, the HRP was tasked with: ensuring the coordination between institutions working in the area of human rights; to monitor and evaluate the implementation of provisions regarding human rights in the legislation and to coordinate work undertaken to harmonize domestic legislation with international treaties to which Turkey is party; to monitor, evaluate and coordinate in-service human rights training in public institutions; to review and research applications concerning human rights violations and to evaluate research conducted and to coordinate work for measures that can be taken; to act as a secretariat for institutions established under the Prime Ministry in the field of human rights; and to undertake other tasks given to it by the Prime Ministry (Article 2). The most notable achievement of the HRP has been, however, to conduct comprehensive training activities for the PHRBs (Dervişoğlu, 2010, p. 102).

The High Committee for Human Rights was established "to undertake work regarding administrative and legal regulations regarding the protection and development of human rights and to propose recommendations on human rights to the Prime Ministry and other public institutions", according to Additional Article 4 of the Law numbered 4643. The HCHR was actually a continuation of the 1997 "Human Rights Coordination Supreme Board", and was therefore similarly composed of high level bureaucrats, namely undersecretaries of relevant ministries. Article 5 of the HCHR by-law details the duties of the institution, and it is here that the HCHR is given the duty to choose which academicians and CSOs would be represented in both the Human Rights Education Ten year National Committee as well as the Human Rights Advisory Committee.

It was the latter that came closest to fulfilling the criteria stipulated in the Paris Principles, and despite this, it can be said that it was, and is, still quite far away from being adequately autonomous in light of these Principles. Established under Additional Article 5 of Law number 4643, the Human Rights Advisory Committee (HRAC) did not have its own budget, or its own legal personality. Its composition, however, was the most pluralistic to date, comprising of representatives from a number of ministries, law-enforcement bodies, specialist general directorates (such as the General Directorate of Women's Status and Problems), as well as the Forensic Medicine Institution, representatives of confederations of unions of civil servants and workers (but only those with a membership of over 100,00), employers confederations, the Union of Turkish Bar Associations, representatives from seven provincial bars, as well as several occupational chambers. Most interestingly, the by-law also envisaged the participation of representatives of CSOs and ten academicians working in the field of human rights, two Turkish specialists with previous experience working in international courts, and five researchers or authors who have written about human rights. These latter categories, however, was to be chosen by the High Committee.

The duties of the HRAC were listed under Article 5 of the by-law. These included, *inter alia*: the presentation of reports, suggestions and recommendations regarding the development and protection of human rights; harmonization of domestic legislation with international human rights standards; establish communication between state institutions and universities and civil society organizations; act as an advisory body on national and international issues related to human rights; take into consideration issues put forward by the High Committee; and present reports on the general situation of human rights violation in the country, as well as on specific issues such as the prohibition of torture, freedom of speech and association, etc.

The ability of the HRAC to present views regarding issues without the need to acquire permission from a higher authority created a well-publicized crisis. This ability was given by Article 5 of the by-law, and was not stipulated in the primary law (number 4643). In the Turkish legislative tradition, primary laws contain the

general framework of rights and responsibilities, while by-laws stipulate the processes and principles which apply in the implementation of these laws. However, a Minorities Rights and Cultural Rights Working Group was formed under the HRAC, and during a press release in which a report prepared by this Group was presented to the public, the report was snatched from the hands of one of the authors by another member of the HRAC and torn apart. Later, the authors of the report were prosecuted, and the operation of the HRAC was ended through a de facto situation as the HRAC did not meet again, going contrary to the law (Altıparmak and Üçpınar, 2008, pp. 25-26). It is interesting to note that the HRAC member involved in tearing up the report was the General Secretary of Kamu-Sen, a confederation of unions of civil servants. The other opposed member was reported as being the President of the Human Rights Association of the Turkish World (Radikal, 2/11/2004). Most human rights advocacy groups, however, noted the incident as indicative of the insincerity of the state:

> An example that can be given regarding these regressions is the situation of the Human Rights Advisory Committee. Instead of owning up to the work of the Human Rights Advisory Committee and respecting the process by which this work was produced, even if not the content itself, and to continue discussing the content, the Government has succumbed to arguments of the status-quo and has come to the point where it does not run the committee that it itself has established. Therefore, it should be aware that the only way it can invite us to a new beginning is by paying its debt of apology and reassurance. Otherwise the seriousness of these meetings and its continuity will never escape from the shadow of doubt stating: "are they doing this for their own benefit? (Öndül, 2008).

It is noteworthy here that Mr. Öndül should personify the Government as an actor who owes an apology to civil society ("us"), a point that is indicative of the clear separation between the two in human rights advocacy discourse. Nevertheless, the HRAC incident and the aftermath has been another wedge driven between this perception, and has substantiated the perceived necessity to refer to the Paris Principles as *the* tool in assessing the autonomy and effectiveness of national institutions.

The final institution inaugurated with Law number 4643 was the Delegations to Review Claims of Human Rights Violations. Additional Article 6 of the said Law stipulated the creation of delegations, tied to a State Minister assigned by the Prime Minister, for the purpose of assessing claims of human rights violations on location. These delegations would be comprised of representatives from relevant state ministries, as well as persons and occupational associations (not CSOs) working in the field of human rights, the latter to be chosen by the State Minister assigned by the Prime Minister. The delegations, following their assessment, would put its conclusions in a report and submit it to the Prime Ministry. No mention is made, either in Additional Article 6 of Law number 4643 or in the by-law about what kind of authority the delegations hold. Moreover, the delegations have never been formed, and have never therefore been utilized (Aydın, 2010, p. 92). Instead, Additional Article 6 has been used, wrongly, as the basis for the PHRBs, to which we now turn.

In accordance with the provisions set out in the "Regulation Concerning the Duty, Establishment and Work Principles of Provincial and District Human Rights Boards", which entered into force on 2 November 2000, Provincial and District Human Rights Boards (PHRB)s were established in 81 provinces and over 850 districts in Turkey with a mandate to protect human rights, conduct the necessary research to prevent human rights violations, impart the information collected to the relevant authorities, provide training for public officials and the public, and to fulfill the duties commissioned by the relevant state ministry. This Regulation was soon amended, however, by the Prime Ministry with the drafting of a new "Regulation Concerning the Establishment, Duty and Work Principles of Provincial and District Human Rights Boards" in 2003. The reasons behind this amendment are explained on the common web page for the PHRBs in the following way:

> With the new regulation, the 'civilian character' of the boards has been strengthened as the number of state officials within the boards is reduced to two: the deputy governor or district governor in the position of President of the Board and a council of the treasury. The main aim of this amendment is to increase the efficacy of civil society organizations, which are expected to be the locomotive of the activities of the Boards. In fact, the Boards

> have been examples of hope with regard to coordination between the state authority and civil society in the area of human rights as a result of the work they have undertaken, the seminal decisions they have made, and their investigation of numerous claims of violations with courage and meticulousness (Human Rights Presidency, 2010).

In explaining the state policy behind the establishment of PHRBs, the Prime Ministry Human Rights Presidency under which the Boards operate underlines the necessity for the state to catch up to the steps taken by civil society in the area of human rights, and emphasizes the role of international and external factors in influencing the first steps towards this end:

> The rapid and complex socio-economic transformation experienced by our country especially in the post-1980 period has not only brought human rights into the political agenda as never before, but has also led to a search for guarantees to fundamental rights and freedoms outside the classic state structure. The fact that problems that could not even be spoken about before were becoming issues in open and intense political struggles and that new and more comprehensive demands for rights and freedoms were being made as an inevitable result of the social transformation in progress, primarily accelerated the organization of civil society in the field of human rights. As the "primary receiver" of demands made in the area of human rights, the state was content in the beginning with watching these developments with suspicion. However, due to external factors such as the strengthened search for democracy in the post-Cold War new world order and the EU accession negotiations, coupled with the continuous modernization of our internal political and social order and the rising importance of the belief in individual rights, the state adopted a policy towards developing its struggle for and benefitting from human rights (Human Rights Presidency, 2010).

The adoption of the Human Rights Presidency of a discourse on "the changing system inside and outside" and the need to be aligned to such change is an important input with regard to understanding the way in which the transformation of state policies is viewed and legitimized, as well as the importance placed, at least at a discursive level, on the role of civil society in this transformation. Provincial and District Human Rights Boards are said to have been established "as a result of this new approach."

In this context, PHRBs present an important opportunity to analyze state-civil society cooperation in practice. The goals of these Boards and their composition as set out in the 2003 Regulation serve to show the "vision" of the state in terms of its potential as well as its limits:

Article 1 of the 2003 Regulation defines the aims of the PHRBs as being:

> …to increase awareness on human rights in both the public and public officials, to protect human rights, to investigate and analyze allegations of violations of human rights, to investigate and analyze the obstacles in front of the use of human rights and freedoms as well as the social, legal, and administrative reasons behind rights violations, and to present solutions to these problems.

Taking into consideration that the Human Rights Presidency perceives civil society as the "locomotive force" of these activities, it is only natural that the composition of the PHRBs as set out in the Regulation involves different stakeholders representing various sections of society. With regard to the way in which state-civil society cooperation functions in practice and the effect such cooperation has on improving access to and use of human rights by the public, PHRBs constitute a pool of information that can only be attained through cooperation with local-level actors.

4.5. Measuring up against the paris principles: how PHRBs fare

Despite the state's acceptance and adoption of the "good-governance" discourse and its attempts to coordinate its efforts with civil society organizations, the Boards have suffered from and are strongly criticized for their lack of dependence from the state.

A convincing argument is made by academicians and civil society organizations that PHRBs in Turkey fail to meet criteria defined under each heading of the Paris Principles.

One of the most fundamental and vital requirements stated in the Paris Principles is that "A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its

composition and its sphere of competence" (Article 2 under "Competence and Responsibilities"). The reason behind this principle is to prevent the arbitrary dissolution of the institution by the Government based on possible views and reports of these institutions that may be politically damaging to certain sections of the state, the political party in power or any other power group within society. Yet the PHRBs are established based on a Regulation, which in turn is not based in any legislative text. Although the Regulation which establishes the Boards makes clear reference to Article 6 of the Law number 3056 "Concerning the Adoption of the Amended Decree Law Establishing the Prime Ministry Institution", the related provision to which reference is made as the basis for the establishment of the PHRBs does not, in any way, call for the establishment of such Boards (Altıparmak, 2007, p. 67).

Another contentious issue concerning the Boards is their composition. Article 5 of the 2003 Regulation on the PHRBs puts forward a specific constituent list:

> Under the presidency of the provincial governor or a deputy governor authorized by the governor, members of the Provincial Board shall include;
> a) the metropolitan municipal mayor in provinces considered metropoles or the mayor's deputy, municipal mayor or the mayor's deputy in other provinces,
> b) a representative chosen by the members of the Provincial General Assembly,
> c) provincial heads of political parties which command a parliamentary group in the Turkish Grand National Assembly or a designated representative,
> d) university rectors or a designated teaching staff,
> e) a lawyer or a civil servant with a law degree working in a state institution designated by the governorship,
> f) a representative of the bar association,
> g) a representative of the medical chamber,
> h) a representative chosen by the governorship from the chamber of commerce or industry,
> I) a representative chosen by the governorship from other occupational chambers or trade unions,
> J) a representative chosen by the governorship among applications submitted by local television, newspaper, radio and similar institutions,
> k) President of the association of neighborhood or village headmen, or if non-existent, a representative chosen by the governorship among applications submitted by headmen,

> l) a representative chosen by the governorship among applications submitted by the parent-teacher associations,
> m) at least three representatives of CSOs chosen by the governorship among applications submitted.
> The president of the board can also call representatives of related public institutions or private organizations to the meetings when he/she deems it necessary.

The first point of contention regarding the members of the PHRBs is that they are not safeguarded by any kind of legal provisions regarding their duration of work or the way in which their work is renewed. The Paris Principles clearly state:

> In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured (Article 6 under "Composition and guarantees of independence and pluralism").

As noted above, the establishment of the Board has no real legal basis. Board members are not given any type of professional immunity, paving the way for potential prosecution and punishment for work conducted within the mandate of the Regulation. The Regulation in question neither states the duration of the mandate of the members nor does it refer to an act which does. The only relevant clause in the Regulation regarding termination of membership is the statement that members who fail to participate in three consecutive monthly meetings will have their memberships discontinued (Article 14(f)).

An even more conspicuous shortcoming of the PHRBs in terms of ensuring independence from the state as regards its composition is the disproportionate power yielded by the only government representative on the Board regarding the make-up of the Board. Although lip-service is paid to the necessity of making the PHRBs multi-faceted and polyvocal, a major block of the PHRBs are made up of representatives from institutions and organizations chosen by the governorship, as can be seen by the above list. Altıparmak notes that certain CSOs that are chosen to the Board are not related in any way to human rights, and gives the example of the

memberships of the Turkish Honorary Traffic Inspectors Association and the Retired Chief of Police Social Solidarity Association in the Ankara Provincial Human Rights Board (2007, footnote 37). The Paris Principles, once again, is clear on both these issues:

> The composition of the national institution and the appointment of its members…shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which enable effective cooperation to be established with, or through the presence of, representatives of:
> a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination… (Article 4 under "Composition and guarantees of independence and pluralism")

The "procedure" necessitated by the Paris Principles above clearly does not exist in the PHRBs. No specific criteria have been identified by the government in the selection of CSOs to the Boards. Instead, the procedure is arbitrarily decided by Deputy Governors heading these Boards. Such a lack of criteria potentially opens up the Boards to being dominated by irrelevant or even malicious CSOs (a point corroborated by certain experiences as seen in the field research conducted).

Another important criterion of independence in the Paris Principles emphasizes independent financial resources for national human rights institutions:

> The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence. (Article 5 under "Composition and guarantees of independence and pluralism").

Such funding is not made available for the PHRBs. Article 15 of the Regulation states that "Mandatory expenses will be met by the governorship or district governorship". No separate budget is stipulated in the Regulation.

When taking into consideration the independence of national human rights institutions in terms of powers, it is necessary to think in terms of "effective

independence". For independence alone would mean little if effective access to the Boards in Turkey, for instance, as well as the ability of the Boards to effectively respond to the violation claims they encounter was not assured. Although the Paris Principles do not directly give any judicial powers to NHRIs[16], they articulate principles of independence in such a way as to ensure its effective application. For example, composition criteria include terms of reference laid down by law as well as safeguards against arbitrary dismissal. The same applies to the availability of financial resources, due to the fact that "resources are needed to appoint experienced and trained staff…Staff shortage is a key difficulty that equality bodies are encountering in many member states" (Rorive, 2009, p. 172).

This last point is relevant to the Turkish case and the PHRBs. In fact, the example of the PHRBs and their powers clearly display a very good example of what is meant by "effective independence". With the 2003 Regulation, PHRBs are given powers beyond the scope of the Paris Principles, most notably the power of inspecting detention conditions in police centers or detention facilities without prior warning (Article 12 (f) and 12 (j) of the 2003 Regulation). However, notwithstanding the fact that these Boards are headed by the officials responsible for the conditions in these detention facilities, the effectiveness of these inspections are put into question by the lack of expertise on the subject of inspecting cruel and degrading punishment (Altıparmak, 2007, p. 99).

[16] Instead they make do with free access to claims, documents and the media, consultation with other bodies responsible for the protection of human rights, amicable settlement through conciliation or through binding decisions within the limits prescribed by law, and recommendations to competent authorities (most of which are under the competence of the PHRBs)

CHAPTER V
THE PROVINCIAL AND DISTRICT HUMAN RIGHTS BOARDS

5.1. Findings from the field

Semi-structured interviews conducted in 17 provinces from different regions in Turkey with Deputy Governors (DGs) at the head of the PHRBs, as well as women's CSOs who are represented in the Boards or desire to be represented, have shown the above mentioned criticisms of the effectiveness of PHRBs to be shared by a number of interviewees and have confirmed, in certain cases, that selectivity is indeed employed by Deputy Governors (DGs) in their capacity as directors of the Boards in choosing which CSOs would become members of the Boards. What is striking, however, is that an overwhelming number of DGs and CSO representatives interviewed had much to say in favor of the potential of the PHRBs, sometimes even in the face of discriminatory practices against certain CSO groups. While the Paris Principles are doubtless a significant indicator of standards for autonomy and effectiveness for National Human Rights Institutions, the research here shows that they fall short of understanding the potential and accomplishments of such unique examples as that of the PHRBs, which, while not completely in line with the Principles, can be analyzed as a tremendously important and underrated step in democratization efforts in Turkey.

5.1.1. On the effectiveness of the PHRBs

A general consensus seems to exist regarding the ineffectiveness of the PHRBs in the eyes of the CSOs and the DGs, who have sometimes cited similar reasons for their opinions. However, when considering this general consensus, it must be taken

into view that different CSOs not only have different reasons for complaining about the ineffectiveness of the PHRBs, but also different experiences for doing so. For instance, while the representative of the Çanakkale Kadın El Emeğini Değeriendirme Derneği Derneği had been seriously disillusioned with the PHRB and had given up on it, the Mor Çatı Derneği (The Purple Roof Association) in Istanbul categorically refused to participate in PHRBs due to their perception that their agenda would not be given priority in deliberations. Both CSOs noted, however, that they cooperated with other state officials through other avenues. While representatives of the conservative CSO MAZLUMDER and the AKP representative to the Izmir PHRB perceived themselves to be excluded from the work and decisions of the said Board, several women's CSOs from the East of Turkey stated that they were deliberately excluded from joining their respective PHRBs.

Among the most cited reasons given by CSO representatives for the ineffectiveness of the Boards was the lack of an independent budget and resources in order to carry out the tasks of the Boards effectively. One CSO went as far as to say that the greatest impediment to a fruitful cooperation between civil administrators and CSOs was the limited amount of finances.

This point was emphasized in an equal if not greater manner by the DGs, 11 out of 17 of whom underscored the importance of an independent budget, especially taking into consideration the necessity to print, publish, advertise, etc. the activities of their PHRBs, or to hold the necessary training and workshop activities which would aid in awareness raising regarding the PHRB. All in all, a majority of the DGs formed a direct relation between an independent budget and the effectiveness of the PHRB. While a number of DGs stated outright that the PHRBs has no budget whatsoever, one noted the importance of the sensitivity of "superiors" in securing funds:

> We do not have a budget. We do not really press for it as we get on somehow. However this is really difficult. For example we find it very difficult to find resources for competitions held in order to raise awareness.

> We have difficulty in other areas as well. [The Board] does not have a special budget. When we at time convey this issue to our superior we are able to spend from various sources thanks to their sensitivity. But we do not know how right it is to use these other sources either, I mean since there is not special budget line we need to transfer it from other budget lines and that is difficult too of course.

One DG qualifies his statement by noting:

> The first time, a subsidy was made for the purchase of office stock such as tables, chairs, and now we are sent an allowance for travel expenses and stationary. The budget is definitely insufficient. The Boards must have a good budget but they must also be accountable. Money should not be spent on a whim.

Another shared answer by the CSOs and DGs for the "ineffectiveness" of the Boards centered on the lack of training and education of Board members regarding human rights, especially on which topics fall under human rights. It is important to mention that only three CSOs from two Western provinces noted this deficiency, mentioning the inadequacy of training material sent by the Prime Ministry Human Rights Presidency and the inexperience of Board members in inspecting detention centers as the primary problems under the lack of training heading. The representative of MAZLUMDER and the AKP representative, both from İzmir, noted in a different vein the dominance of what they called "bureaucrats" in the PHRB, whose legal viewpoint of human rights betrayed their lack of training in human rights matters:

> In my opinion some of them have no training whatsoever. So imagine that people with no training on the matter are voting on a topic in the human rights agenda…We say this a lot. Is it possible to vote away the right to life? Should the man's arm be cut off? Most say it should so then it will? Could something like this happen? We cannot explain this to the Board members. Fundamental rights and freedoms cannot be foregone through a majority vote. But here they do this by voting. Very recently an issue on discrimination came on the agenda. The Municipality did not allow the hanging of posters depicting veiled women, and a vote was held here saying that this was not discrimination.

The lack of qualified personnel was also mentioned by the DGs interviewed. Several issues were emphasized that diverged from the statements of CSOs,

however. For instance, specific mention was made of the necessity for knowledgeable personnel, either from the academia or with law degrees (Diyarbakır and Çanakkale). One DG stated the following:

> First of all in order for the Board to operate effectively the Board members must be very well chosen and selected…For instance those with a legal background, experience in the field of human rights, educated, interested in this subject and someone who can really create a human rights profile of the province through the Board. Maybe someone who can conduct academic analysis, or if not academic analysis at least someone interested. For example right now we are trying to prepare a report on environmental pollution and in practice I am explaining it in order to prepare a report on the environment. As you know this is included in human rights, the right to live in a healthy and clean environment, but it has been very difficult. Why? Because I do not have qualified personnel who I can commission to prepare this report.

While one DG stated that Board Members "do this job as if they are forced into it", another DG heading a PHRB from the same region in Turkey noted that the Board operates through the work of a chief clerk appointed from the secretariat of the Governorship who "rightly places no importance on his/her job, as it is his/her secondary job". Yet another DG, again from the same region of Turkey, noted that it was important for Board members "to train ourselves first; what is the human rights board, which issues are included in and which are excluded from human rights…We really do not know much, we do not know the law on human rights or the legal material surrounding it". This DG also underlined that such a lack of knowledge of the exact issues falling under human rights also paves the way for the politicization of the issue, as including one set of issues under human rights is used by one political party against another in the Boards.

It must be noted, however, that the DG of Istanbul, heading the very active PHRB there, as well as the DG of Erzurum, a major city in Eastern Anatolia, both noted their satisfaction with the knowledge of the Board members on issues relating to human rights, with particular emphasis placed on the availability of professors, lawyers and other qualified members from whom other Board members have learned from.

Another topic in which some agreement exists among CSOs and DGs who believe that the CSOs are ineffective as regards the causes of this ineffectiveness revolve around the problems caused by the rotational system, whereby DGs are constantly renewed following the end of their terms of service in a particular province. Certain CSOs have stated that a well-functioning and fruitful cooperation established with one DG would be reset when another, sometimes less complying, DG came in place. This point has been raised by a number of representatives of CSOs interviewed, who complained about having to explain their advocacy activities, as well as their CSOs time and again to gain the trust of the DG concerned. The problem, of course, becomes reversed when certain DGs and sometimes even Governors themselves become less open to cooperation than the previous DG or Governor, which leads to regression in the numbers and activities of the PHRB concerned.

The issue of the constant rotation of DGs was also raised in the interviews as possibly having detrimental effects on the continuity and effectiveness of the Boards. While one DG deemed this rotation to be important due to his view that prolonged periods of membership created impasses in certain issues and perspectives in certain provinces, and that the membership of the Board as a whole should be renewed as an important safeguard against entrenched views as well as a means to train new experts in the field, another DG noted that stability in membership was important as accumulated experience and knowledge are key to better dealing with claims regarding human rights violations. The DGs interviewed seem to be equally divided on the issue.

The final similarity in the answers of CSO representatives and the DGs regarding reasons for the purported ineffectiveness of the Boards is a surprising one, in that it relates to the incapacitating power of the DGs, who, as representatives of the "state", are claimed to be intransigent on certain sensitive subjects due to the fear of being implicated in decisions going against the state. Among the sensitive issues cited was that of incest and ethnic discrimination. One CSO representative stated the case in the following terms:

> We become a side/take a side (in the Boards). The State is already a side. We analyze issues by taking the side of the citizen, so we take sides in this sense. But the DG before this one was very oppressive. He never let us talk. Whatever we brought on the agenda he would say that we did not have time, that the Governor could not look into it. The man somehow rejected everything. It was like an invisible glass existed between us. The man did not want to lose his seat, he loved (the province) and was afraid. After all, he is a civil servant, he was afraid he would lose his seat.

One CSO representative from the Eastern region noted that the effectiveness of the Board is tied to the role in which the civil administrator "places himself": "If he/she is there as a facilitator we have no problems, because he listens to everyone and takes their opinions down on paper including criticisms and opens the topics to discussion. But if he says 'I am a civil administrator there is no such problem' a problem arises". A good example to the latter type of DG was given by the chief clerk of the Board in one province in the following manner:

> If he (the DG) places a reserve on a particular decision there would be nothing there that would cause any trouble to him. But instead of placing that reserve he tries to pressure 30 people into not taking that decision. But you cannot put a stop to people's free will, not everyone needs to think as you do.

In fact, the argument bears many similarities to one of the chief arguments against participating in the PHRBs, namely the purported implausibility of bringing claims of violations of human rights to the state, which is said to be the principle violator of these rights. Four interviewees from among the DGs stated opinions to this effect. While one DG noted the fear of the PHRB members regarding media exposure due to the experience with the Human Rights Advisory Board (specified above) other DGs made the following statements:

> DG1: Fist of all there is a significant contradiction here. The complainants are obliged to complain to the state. This is similar to a patient complaining about poor health service to his/her doctor.

> DG2: Human rights boards should be independent from the state, human rights should be the job of pressure groups. They bring a police officer into my room but I am also responsible for the actions of that police officer, so what will happen? I am at the head of the Board. What does this mean

> symbolically? The authority receiving complaints about state violations of human rights is the state.

Similarities in opinion regarding the reasons for the ineffectiveness of the Boards, however, is only a part of the story. In fact, the agreed reasons for the ineffectiveness of the Boards can be seen to be among the objective reasons pointed out by the academics and CSOs writing on the subject, such as the lack of an independent budget, unqualified Board members, the constant rotation of DGs heading the Boards, and the incapacitating power of certain DGs. While certain DGs have stated that they saw a problem with employing an institution tied to the state as a board vying to protect human rights, headed by a civil administrator who is accountable to the most powerful man/woman of the state administration in the province in the person of the governor, it must be noted that these were a minority group. Differences in opinion as well as the additional reasons given by DGs regarding the ineffectiveness of the Boards is due either to a) a blame-game whereby the CSOs and DGs blame each other for being the impediments to the effective working of the Boards or to b) reasons that could be unearthed through the insights available to DGs.

First of all, many DGs seem to believe that the PHRBs are well-known among the public and are good at processing complaints. One DG mentioned the indirect effectiveness of the Boards, such as a raised awareness in the public regarding human rights. The DG who raised this point, while lamenting the lack of the necessary knowledge concerning the scope of human rights, nevertheless underlined the importance of looking into all queries, in order to "paint the image of a concerned and efficient state" in the mind of the applicant. Other points raised by the DGs included a widespread view that the PHRBs lost their effectiveness over time, as what began as enthusiastic involvement in issues regarding human rights were dramatically diffused due to issues regarding the effectiveness of the Boards.

Among the few DGs who openly stated that the PHRBs were not well-known and did not operate effectively, the fact that PHRBS do not have any power of enforcement was given as a common reason. Another reason noted was the alleged

lack of awareness or indifference of the public concerning their human rights. This is also reflected in the oft-cited complaint by the DGs that many claims of violation of human rights are made that do not concern human rights at all. Most cited claims to this effect are complaints against teachers' treatment of students, issues which "are in the jurisdiction of the municipality" such as environmental pollution and noise pollution, reports of gambling, as well as general requests for alms. It is interesting to note that a case can be made that some of the topics cited above may in fact be human rights related. For instance, while some DGs conceded that the right to a healthy or adequate environment did in fact fall under human rights, others were not so sure:

> We cannot really call (some of the complaints) human rights violations. Complaints regarding environment is in second place. These are generally on cleanliness of the environment, dissatisfaction with the municipalities actions, negative feelings. I can give you a concrete example: there are bus stops right in front of the governorship. There are 5-6 complaints regarding exhaust fumes polluting the environment.

Another point made by several DGs is that some of the applications made concern cases that have already been taken up by the courts, in which case the Boards cannot interfere. These examples should not be taken to mean, however, that veritable cases worthy of further analyses do not come in front of the Boards. Frequently cited issues of complaints include the operation of prisons, ill treatment, right to life, right to healthcare, right to property, etc. One DG stated the following:

> For instance H type prisons concerning the terrorist organization; 75 percent of the applications made are on this issue. Individuals who have been sentenced to prison for being a member of the terrorist organization complain about the conditions in the prison, about not being able to talk Kurdish with their families, and about impediments to being kept together.

One DG in the Eastern region repeatedly underlined that some citizens, especially women, have difficulties in communicating in Turkish and therefore cannot bring their complaints to the PHRB, and that therefore most complaints are made through CSOs.

A final issue, exclusively brought up by some DGs was that the workload on DGs is too heavy, and that as a result they cannot concentrate on researching and analyzing issues as in depth as they would like to. As a result of the resulting lack of initiative, it is said, the effectiveness of PHRBs suffer.

5.1.2. On state selectivity

Research for this thesis has clearly shown that the state is particular about which CSOs it is willing to work with, especially in the Eastern/Southeastern regions of Turkey. The "state" here denotes the DGs interviewed, who preside over the Boards and who have the power, according to the 2003 Regulation (see above), to choose which CSOs are to be represented in the Boards. Having said that, an overwhelming majority of DGs interviewed expressed their favorable opinions regarding cooperating with CSOs, and have emphasized how they have learned from such cooperation. Even a rare sweeping comment made by one DG from an Eastern province shows how distrust of CSOs have given way to fruitful cooperation as a result of the specific outlook of the Governor in charge and the DGs own experiences:

> The truth is that the state does not like working with civil society. We see ourselves as rivals and this comes from the 'father State' tradition. But the Governor at the time was a very brave individual and very open on such issues. He told me that I was the DG related to the issue and that I was free to do anything I wanted on any issue and that I would have all the financial resources I needed. With such power I was able to work with KAMER, which is the oldest CSO on this issue, which has proven itself. Of course there are points in which it can be criticized but it works very hard… we have done very valuable work together and I must admit I learned a lot from them.

DGs concede that CSOs "can be more effective than the state in creating awareness", that they are more active because they do their job voluntarily, that different "fronts" are needed in the "battle" for rights, and that the "aid and support" of CSOs is crucial for the effective implementation of projects. However, such opinions are laced, especially in the Eastern provinces, with expressions of distrust towards certain types of CSOs. These are predominantly CSOs who are either

"inactive" or "politicized". It must be emphasized that every single DG who commented on the importance of working with CSOs remarked that a veritable CSO culture did not exist in Turkey, that CSOs were formed merely for prestige purposes, and that these CSOs applied for membership in the PHRB solely for acquiring the title or prestige of being involved in the PHRB:

> My answer (to the question of the whether state-civil society is necessary) is definitely yes…I feel that this is an indicator of development. If you look at developed countries you see that the number of civil society organizations is great and that they are very efficient. The numbers here have increased but I do not think their efficiency has. There are more than 600 associations in Malatya. But most do not have a place of operation, and no one knows what most of them actually do. In our country the establishment of associations, being part of civil society organizations is seen as a vehicle for social status. The rationale is this: "Let me create an association and go to the Governorship through this association, go to the Municipality, because if I go there as Mr. Ahmet or Ms. Ayse, as an individual they may not accept me but when I say that I am in the administrative committee of this or that association they will accept me." I feel that it is a way to get some type of social status. Because I know how it is in practice. The number of CSOs in … that work seriously is no more that the fingers on one hand. I mean the number of CSOs working according to their purpose and statute. Yes cooperation is a must. In the end it is not possible to separate the state from society, and as our target group is society itself, I do not think that a serious accomplishment can be achieved without this cooperation.

Two Board members from separate provinces also concur that CSOs apply for membership only to "be seen" and to "gain prestige". A few additional corroborating comments on the matter by DGs is as follows:

> DG1: The lawyers and professors who come to the Board from universities never miss a meeting. It is the CSOs that miss meetings. CSOs only become members to be known, to say that they participating in the provincial human rights board, to write this down in their CVs.

> DG2: (State-civil society cooperation) can only be successful if it is a real CSO. But if it is a makeshift CSO where 7 people come together and then say "given me a building" it won't be successful. Only if the CSO can move the masses. But a makeshift CSO does not have a group behind it, they are only 7 individuals coming together, it is a social satisfaction thing for CSO administrators.

> DG3: The problem in Turkey is that CSOs are not effective in society. There is the business of tribes and are religious communities in Turkey. This is where society's problems come from. Because CSOs cannot show their real functions the state tries to fill the gap. As a result the state gets very tired, and cannot do what a state needs to do. The citizen expects everything from the state.

Another predominant perception of DGs regarding the state of play with regard to CSOs in Turkey is that they are "politicized". One DG from an Eastern province states that this politicization is one of the greatest obstacles to the development of an efficient human rights regime in Turkey:

> I think our people, and I think this is particular to the Eastern region, when human rights is mentioned, they think of it like a sword of Damocles, as an authority hanging over the state…When seen in that sense I think that there is a lack of awareness of what human rights is throughout Turkey, but especially in (name of the Province)…I mean it is a concept that is politicized, both abroad and within Turkey. This is why human rights bring to mind very different things rather than individual rights and freedoms. This is problematic in terms of the development of human rights…This concept is a very politicized one. This prevents steps to be taken in Turkey towards a certain direction and it prevents human rights to take its rightful place….A few more provocative applications were made in this direction. We did what was necessary in a manner appropriate to theirs, but this remains one of our fundamental concerns. At least as long as I am president of the Board this will be the primary concern of the Board. I do not know how this will be seen from Ankara and I do not know what the approach of people from Ankara is but the provinces have their own concrete reality unfortunately. This is a province in which a negative report is made in the national press almost every month. It is a place with problems, a place with its specific conditions. In this sense I believe that it will be biased to look at the functions of the human rights board by living in a world of ideas disconnected from reality.

It is no surprise then that among the common criteria used in choosing which CSOs would become members of the Boards, DGs stated that they place importance on the relevance of the CSO to the issue of human rights, level of activity of the organization in the field of human rights, the ubiquity of the related CSO in Turkey and in the province concerned, the number of members of the CSO as well as their appeal to the public, and the specific ambitions of the CSOs. This last point has been stated by all DGs spoken to, who have made a point to emphasize the

necessity of the CSO to be impartial and non-political. Two DGs noted the importance of the CSO to be a "CSO working for the public good"[17]. One elaborated in the following manner:

> Among the CSOs, those working for the public good are chosen. Recently there was only one consumer association applying for membership. The Governor chose this association because of this. However, when there are more than one association working in the same field, the one working for the public good should be chosen. It is important that the association is neutral. In some situations the association says it is an CSO but in fact it is politicized.

A common point made about the choosing of CSOs to the Boards was that the Governor's decision would be key, as sometimes the applications of CSOs with the potential of creating "problems" would be referred to the Governor, who in turn would make the decision. A DG from a Western province, remembering how CSOs were chosen to the PHRB over which he presided in a central Anatolian province, stated that the list of CSOs applying for membership would be sent by the chief clerk to the Governor, who would then choose from the list according to whether "the CSO would make any noise or not". Commenting that this is "not a good way of going about it", the DG clearly states that "more objective criteria is needed". The very same words are used by another DG who, while underlining the necessity to work with CSOs that "work towards the public good", said that "objective criteria need to be established regarding the acceptance and termination of the membership of CSOs to the Boards".

Although DGs assert that they prefer to work with active, effective, and publicly-endorsed CSOs whose work relates closely to the field of human rights, their preference for non-politicized CSOs seems to make them reluctant to engage such CSOs, whose level of activity seems to be the reason they are effective and supported by the public, making them more assertive in their advocacy and less prone to manipulation by DGs. While one interviewee in a Western province

[17] This is a title conferred by the proposal of the Ministry of Interior following the opinions of the Ministry of Finance and other relevant ministries according to Article 27 of the Associations Law numbered 5253 and dated 23/11/2004 (discussed below).

accused the PHRB for discriminating against the representative of the Peace and Democracy Party - (BDP, which has a large Kurdish electorate and prioritizes the Kurdish issue in its political agenda), the great majority of accusations of unfair play regarding aspirations for membership in PHRBs have come from the Eastern provinces, and by active women's CSOs who focus their advocacy on the plight of Kurdish women and who claim to be supported by the largest number of women in their respective provinces. Among the women's organizations interviewed for this research operating in the East and South East region of Turkey are included the Van Women's Association (VAKAD), Women Entrepreneurs from Kars Association, and the biggest, most widely organized and most active of these, namely KAMER, which is organized in 23 provinces in the East and Southeast region of Turkey, and whose representatives from three provinces were interviewed at length[18].

It must be stated, first and foremost, that every one of the representatives interviewed strongly emphasized the necessity to work with the state, had worked with the state in a number of occasions and reported both good and bad experiences, and, as will be discussed below, continue to be adamant regarding working with the state through the specific institutions of the PHRBs. Nevertheless, the women's CSOs that feel discriminated against cite specific reasons for such discrimination against their membership to the PHRBs.

One prevailing view of women's CSOs who feel they are discriminated against in their bids to become members to the PHRBs was that the DGs, as representatives of the state, are reluctant to work with empowered women who do not fit their traditionally assigned social roles. Nearly every CSO stating this opinion also noted the fact that other, more traditional/conservative women's CSOs were chosen to the PHRB instead of them:

[18] KAMER's website states that it has conducted awareness-raising meetings with over 30,000 women, human rights awareness meetings with over 10,000 women, helped 5000 women who asked them for help to combat domestic violence, supported 600 women who were in danger of being killed under the guise of "honor", and trod 2,500,000 km of road in their efforts to do so. Available from: http://www.kamer.org.tr/index.php

CSO1: Our CSO is very well known in our province due to its level of activity, initiative-taking and the fact that it explains itself very well in the media. The state keeps us at the margins because we are an CSO made up only of women, and women who are a bit anti-establishment. This is how we feel I do not know if my friends think the same way but this is how we feel…we have a hard time with local administrations because there is a kind of prejudice here. And on top of it we are not women in the traditional social sense. Unfortunately it is the men's viewpoint I do not know but maybe it is because all the administrators are men we have a problem here…Look at the Provincial Human Rights Board. There you have the … Women's Association. How do they work in the field of human rights? they only work on the issue of women's veils. We also work on this issue…Let us compare, why is the …Women's Association in the human rights board without any conditions asked? They applied and were admitted. Maybe they did not even think of applying but were advised to do so I do not know. But we apply for ourselves and they tell us that the capacity is full. What kind of capacity is this that you cannot admit one more organization?

CSO2: We are not part of KAMER, but we were trained by KAMER. I established the association after my training in KAMER. KAMER has had an effect. We have seen that they are especially against KAMER.

HOA: Why do you think that is?

CSO2: They think that it is an undertaking that is a little out of our traditions and customs. It is also because it is a foundation which helps our women to defend their rights against our men in a more conscious manner. We come from a patriarchal society. We see that they are trying to make women respectful, and because KAMER goes outside this mold and because we have met some governors who were more patriarchal.

CSO3: If you see the applications, that list in our province it is predetermined. Just for show.
HOA: You mean to say that the CSOs that are to be admitted to the Board are determined beforehand?

CSO3: I mean I do not want to take sides but for example there is one women's organization right now and it has taken on a traditional women's role there and it is made up of women who serve cakes and pastries in the meetings. They do not even attend the meetings, their area of work is very different. They only work on teaching how to read and write.

CSO4: In our province there are religious community associations named as …(lists various flowers). The Governorship gives these 3 storied buildings. All because they are religious, they pray, they read the Quran. They hold charity bazaars, collect money for charity. They collect bags of

> money and say that it goes to students but we cannot know. It is like this in Turkey in general.

The representative of the Trabzon Mother's Association, a member of the Trabzon PHRB, describes her organization in a way that arguably corroborates the above views regarding the criteria used to choose women's CSOs to PHRBs:

> We differentiate ourselves from other women's CSOs. We approach the matter more amiably. We do not express our demands by putting our fists on the table. We try to approach the matter more amiably because we are mothers.

Aside from the view that they are discriminated against due to being feminist, empowered women, a second view expressed by an CSO was that they felt shunned on account of being Kurdish, citing important experiences to this effect:

> We took the issue of Kurdish women to CEDAW, when the 2005 report to CEDAW was prepared…of course the state made its defense there but we said this: Kurdish women living in this region have different specific problems. What are these? Evacuations of villages, migrations, the village guard system. All of these have increased violence against women fivefold. The woman who had an income in her village came here and became a consumer, prostitution increased, "street-children" increased, girls are not sent to school and are shut into their houses. Much has been lived through, this is a disadvantage. You come across it everywhere that has the village guard system, the village guard system is in every village especially in the districts. First and foremost there are weapons. You see that in the murder of women the use of guns has increased dramatically. We are looking into it since we were established, you look at suicides, there are such strange incidents. The women is shot behind her back, they call it suicide. The prosecutor does not see this can you imagine? This is the stuff we have to deal with…So we carried all of this to CEDAW. Maybe this is why from the very beginning we were discredited in the eyes of the state and civil administrators. Why? Because we used the word "Kurd". This is what I think, my personal opinion.

The Van Women's Association, VAKAD, stated that one of their newest project was to generalize trainings on women's human rights through EU grants, and to support and help establish independent women's organizations in the Eastern provinces of Muş, Hakkari and Bitlis. One such women's CSO VAKAD spoke of was the Güldünya Women's RİghtsAssocation in Bitlis. A news article published

online by the BİA News Agency on 26 May 2009 included statements by the president of the Association, Gül Aksoy, who spoke of the constant pressure from widespread patriarchal views and political conflicts against their association, stating that the members of the association were women from the Democratic Society Party (Demokratik Toplum Partisi - DTP) and that these women garnered negative responses from the environment.[19] Furthermore, in a similar fashion with VAKAD, Gül Aksoy notes that her Association applied for PHRB membership, but were denied, without explanation:

> They did not give us a positive or a negative answer. When we spoke to them face to face they officials told us that they would not admit us into the Board. We asked them to hand us the negative decision in writing so that we could take this official document and lodge a complaint to the Ministry but it has been months and we have not received a written reply (Aksoy quoted in BIANET, 2009).

Another prominent theme in the perception of women's CSOs advocating predominantly for the rights of Kurdish women is that of personal problems with state administrators, who, according to one CSOs estimation, arrive at the region "with tension" and cannot focus on doing their jobs in peace, leading to prejudice against "us", meaning their Kurdish women's CSO. Nevertheless, all of the Kurdish women's CSOs spoken to stated that the situation changes according to which state administrator (governor or deputy governor) one is dealing with:

> It was very difficult to work with the previous governor. Now our governor is different. The old governor would not even stand up when we entered the room. But we can speak with the governor now. He treats us very well. His manner is very well…We have problems with deputy governors. For example our deputy governor tells us that he will listen to our problems in front of many citizens. We tell him that we would like a private audience. In the end of the day we are talking about the private problems of women. Plus, our province is a very small one everyone knows one another. But the deputy governor says "there can be no secrecy here this is the public's place" and we are forced to speak in front of everyone.

[19] The Democratic Society Party was shut down by the Constitutional Court on 11 December 2009 for allegedly supporting the PKK, and is seen as the predecessor to the Peace and Democracy Party (Barış ve Demokrasi Partisi).

Another reason cited by an CSO regarding the barring of active women's CSOs from entering PHRBs was that some DGs heading the PHRBs are afraid of the workload this will bring:

> Another thing is that the workload will increase. Because they only write it on paper, I have witnessed this; the PHRB meeting has been held and this many members have participated and that the meeting is adjourned because there have been no applications, etc., etc. Then a signature in everyone's place. Because there is work to do. There is work here if you do it. If this Board can really operate, there is much work to do by the Board.

According to the CSOs interviewed, among the reasons stated to the CSOs for rejection of their applications for membership to the Boards include the denial of the existence of the problems of violations of women's human rights in the specific province, the statement that the issue is already being worked on through other CSOs who are already members to the Board, that the Board is full and that no additional members could be accepted, or in one case, no reason given at all. Two CSOs have also noted that they were deprived of logistical support by the Governorship for meetings, seminars, etc., while such support was provided to other, more conformist, women's CSOs.

5.1.3. Insistence on PHRB membership

A former member of a PHRB noted that certain organizations had boycotted the PHRBs due to the existence of representatives of law enforcement bodies, and noted that they did not want to work with the state. The MAZLUMDER representative in the Izmir PHRB had also stated in the interview that the Human Rights Association had boycotted the PHRB for being too closely aligned to state interests. This was corroborated by the Human Rights Association in an e-mail correspondence, in which it was stated:

> The HRA entered the Provincial and Human Rights Boards during the first months (in 2000 or 2001) they were established. However, it has seen that these boards could not monitor and eradicate human rights violations. This is because representatives of problematic institutions (Police Chief, Commander of the Gendarmarie, etc.) who were responsible for these violations also participated in these Boards.

> The HRA has argued that these Boards should be independent human rights boards in line with the Paris Principles. However, as these boards are not in line with the principles we defend, the HRA has withdrawn from the PHRBs in which it had entered in a short period of time.
> Respectfully,
> HRA General Headquarters (HRA, personal communication, December 26, 2012).

The Human Rights Association is one of the most well-established, well-known and active CSOs in Turkey, and therefore it cannot be considered a far stretch to argue that its decision to boycott the PHRBs may have damaged the legitimacy of the PHRBs further. However, out of the 13 representatives of CSOs interviewed, only two, one operating in Istanbul and the other in Çanakkale, have noted that they do not desire to work with PHRBs. While the former CSOs reason had more to do with the concern that due to the more general human rights mandate of the PHRBs the issue of women's human rights may be crowded out, the latter specifically emphasized the lack of effectiveness of the Board in Çanakkale. It must be noted, however, that both CSOs reported a high degree and intensity of cooperation with other state actors, as well as the municipalities.

The most interesting result reached by the research by far, however, was the fact that the women's CSOs operating in the East and South East of Turkey, despite very important setbacks such as being, sometimes on numerous occasions, denied membership to the PHRB as well as being on the receiving end of what they felt to be discriminatory approaches by the state on account of them being feminist women who are also Kurdish, nevertheless stated their commitment to working with the state at the local level, specifically within the PHRBs. In fact, this commitment was highlighted very strongly in the interviews. One women's CSO operating in the East, for instance, stated: "We will always try (to enter the PHRB). As long as they do not accept us we will always try the next year, when a new Governor comes." KAMER is especially adamant about being accepted. The Van branch representative, for instance, stated:

> As you know, KAMER is a very large organization and we have branches in 23 provinces in the East and South East regions. Unfortunately KAMER

> was accepted in only 12 of the 23 provinces to the provincial human rights boards. The other 11 provinces, and Van is one of these, I mean we made our application to the provincial human rights board because we work on the issue of violence against women and we told them that this was a part of our work and that we wanted to be members of the Board so we made our application…(After noting rejection without a reason) I obstinately wrote the application letter again and I will send it again because this board is very important for our area of work so I wrote an application letter again.

The representative of KAMER based in Diyarbakır, the city which houses the headquarters of the organization, stated that a similar resolve had resulted in membership to the PHRB:

> Of course we as KAMER tried very hard until we got in (the PHRB). In fact, we made this a 25 November activity. We applied. I speak for Diyarbakır, we wrote at least 5 application letters. They accepted us after our sixth letter.

The reasons for such insistence to become members of the Board are stated very clearly. Women's CSOs have different experiences with regard to cooperation with the state. However, among the women's CSOs interviewed, all but one noted the importance of cooperating with the state. In Izmir, the representative of the Association for the Protection of Women's Rights (which is listed as a "CSO working for the public good") believed cooperation with the state at the local level to be a crucial step in addressing specific issues which existed in the province, which in the case of Izmir included such specific issues as the integration of internal women migrants into social life in Izmir. Cooperation with the state allowed the delivery of training and services to these women, especially regarding which institutions of the state they could make use of when in need. The PHRB platform was explained as being critical in this regard due to its diverse membership and proximity to state officials. Moreover, PHRBs have been noted as an important mechanism to promote the visibility of the issue of women's human rights, and share good practices through example with the other 80 provinces. What is more, with the use of appropriate communication techniques, taking care to mention the positives alongside the negatives, the representative of the women's CSO in Izmir

mentioned the creation of "women-friendly administrators", who would then play vital roles in promoting and protecting women's rights in the province.

The most important point to underline here is the emphasis laid by the representative interviewed on the paths opened up in the protection and promotion of women's human rights through cooperation with the state at the local level, which otherwise would not have been possible. The CSO representative marks how this cooperation is actually facilitated at the local level, and how the PHRB presents itself as an opportunity to realize such cooperation, mainly as a deliberative platform in which the perspectives of state officials can be changed through rational explanation:

> There is something that I have observed in Izmir. Izmir is not only a province in which migrants are integrated, have intertwined with one another, where cultural exchange happens, where peoples can live a little more freely, but also a city in which the administrators are integrated as well. We definitely integrate administrators, whether local level administrators or the administrators of state institutions. Women undertake many activities and much cooperation. They (the administrators) learn. They learn in the provincial human rights boards and via other activities that we undertake. It is very important that we create women-friendly administrators…Izmir is sensitive and we really believe that we can create this sensitivity with the administrators…I mean it is important that the struggle against certain wrong practices that come from customs and traditions for years in Turkey starts here. In this sense if you put the issue in front of the administrators in a good manner, if you explain your issue well, they start cooperating with you.

Strikingly, very similar reasons were given by KAMER representatives, who had been or still were refused membership to the PHRBs. The Muş KAMER representative stated it in the most succinct manner: "Of course cooperation (with the PHRBs) is extremely important. We need to work with them in order to help women." The representative from the KAMER headquarters in Diyarbakır stated her case regarding the usefulness of cooperating with the PHRBs as follows:

> We entered (the PHRB) as soon as we were accepted. But it is certainly possible to enter into the PHRB and be ineffective among the group of men there. I mean it is a mentality issue, it will not change even if it is a women, I say men now but in the end our work or struggle is actually not

> about genders but about mentalities. In the end we are working for the transformation of the mentality. That is why we worked hard to be in this monitoring commission and we tried to gain entry everywhere, to every penitentiary, places where asylum seekers are kept, hospitals, kindergartens, women's shelters, I individually took part. We are in the group making these visits. Because it is very important to look at everything with a critical eye and be aware of the violations there, because awareness is a very important thing and this is one of the most important characteristics of KAMER…I say this in every meeting that I attend. You see, we did it this way in the council, the 13th women's council. I especially took the floor there. Women's organizations from 81 provinces participate in the council, including LAMBDA and KAOS GL. All organizations working on the issue of human rights are represented there. I said to them all my friends try to participate in the PHRBs. This is something that is very important. It is very important, why, I will tell you one by one and I shared everything with them. Look this changed here and that changed there these are important things. Patients did not have pillows under their heads. Patients' families pay money every time they enter the hospital parking space. We lifted that. I advised it for everyone and they received it very warmly. Now everyone is trying to enter the PHRBs. This gives me much satisfaction.

Another frequently cited reason for the insistence to participate in these Boards is the perception that the force of the state is manifested in Deputy Governors, thereby greatly facilitating the effectiveness of the decisions of the Boards and ensuring, to a large extent, that the decisions are carried out by other state institutions. Looking at the issue from a reverse angle, it is also stated that failing to create a working relationship with state officials risks the failure of activities undertaken by CSOs. Debating the issue, two representatives from the same CSO which had effective cooperation mechanisms in place with DGs, brainstormed in the following way:

> Representative 1: Look, this issue (necessity of DGs presiding over the Boards) also has to do with our style of state administration. If you are looking to solve problems, in that type of mechanism, like I said, personally a police chief came to me and told me that he wanted to learn the problem in his own institution. He said I want to learn our wrongs, convey them to me because I am the solution spot and I will solve it. Do you see? I mean this type of view is very rare in Turkey. Interestingly enough, I fell into a dilemma regarding how I would answer this question. Let's say the DG is not there, I think about how successful we can be: very difficult. If he is, to what extent can we be successful? it is not very difficult yes we can be somewhat successful but can we attain the ideal success? That is hard as well. Am I able to explain what I mean? I mean

> here you are trying to solve issues such as the relationship between the individual and the state, regarding violations of human rights and women's human rights, and in terms of women's human rights violation perpetrated by people on other people, such as domestic violence, incest. Where we always go time and again is to the feet of the state. I mean we definitely need to work by cooperating with it, incorporating it into our work. That is why yes maybe he/she should be there (DG at the head of the PHRB) but maybe they should think about making the Board more independent, I mean the DG is assigned his/her duty and we should think about how independent a DG posted there as the representative of a state can be?
>
> Representative 2: Of course another question mark rests on how much they are under pressure or how these DGs under so much pressure can preside over the Boards and how they will use their votes. Of course the DG needs to preside over the Board because I need to overcome certain problems by using the state administration through his/her medium. I have no other method of overcoming these problems without the state administration. I will sit down and take decisions and those decisions will remain there as decisions taken. It is only through the state administration that these can be communicated to the relevant persons and the result monitored. But the problems is this: are the Boards, which are preside over by DGs in the name of the Governor, expected to take a decision against the state administration or that there is a violation of a human right. I mean will the DG raise his hand in favor of a decision against the public administration or will he/she state that he/she is against it?

This dilemma is also expressed in another province in much the same way, as the CSO representative interviewed noted that DGs help move the work along, such as publishing and distributing material, or using their influence and ties to the municipalities to get things done. The same interviewee noted clearly: "When I go there as an organization I have a much harder time". However, an important example was given as to how the DG in question actually prevented a decision to be taken on a case involving the violation of the labor rights of a teacher by the Ministry of Education for fear of creating a precedent which would be referenced by "thousands of teachers".

The usefulness of the DGs heading as Presidents of the Board was also confirmed in Eastern provinces, where one CSO stated that while it was not essential for DGs to be heading the Boards, that it "increases opportunities", while another CSO representative, whose association was rejected membership, lamented that the

Board would have provided an environment in which they could sometimes obtain what they needed from the DG. Interestingly, such interest-oriented approaches was stated as being a factor for the aid given by businessmen to the PHRB by another CSO representative, who noted that because the Governorship was involved in the Boards, businessmen would help out with competition prizes because they would then have the opportunity to get something in return. Finally, the representative of MAZLUMDER, in answer to the same question of whether or not a DG should be president of the Board, noted: "It would be very beneficial if the Governor presided over the Board. Because then you would be talking to someone who had the power to intervene very effectively".

Another important explanation regarding the insistence of women's CSOs, especially Kurdish women's CSOs, to participate with state officials in general and with the PHRBs in particular is the firm belief, held by all Kurdish women's CSOs interviewed as well as a number of Western CSOs, that their participation would go a long way towards improving the functioning of PHRBs. While VAKAD and the Muş branch of KAMER specified their already existing effectiveness and the fact that women whose human rights were violated sought them to receive help, KAMER Diyarbakır is unambiguous regarding the increased effectiveness and gender sensitivity of the PHRB following their membership. An emphasis is placed here once again on the benefits of operating at the locality and having expert local knowledge regarding the issue:

> I know what the person walking down the street here is thinking, but you do cannot. Because it's the mentality, we've lived, grown up, been born here, we know, we know what it means, after a while you can understand why that person lifts his/her eyebrow when walking.

Regarding the role of DGs as directors of the Boards, answers given by the DGs reflect their low regard for the capacity of different CSOs to cooperate and the high regard for such capacity of state administrators. Out of the 12 DGs who answered this question directly, 11 (representing every region covered in the research) thought that DGs fulfilled a crucial role in organizing, leading and making decisions in Board meetings, while only 1 DG noted that the Board would function more

effectively if "completely privatized", i.e. left in the hands of CSOs. Again, out of the 12 DGs, 10 DGs noted the importance of the Secretariat services provided by the Governorships, and that the Board would not be able to convene if it was not for the Governorships role. Some important quotes in this regard are as follows:

> DG1 (East): Let me put it this way, I am not saying this in a dogmatic way as a civil administrator. People have a certain expectation from public administration…A public official assigned to the post there definitely creates an orderly working method and understanding. When you do not have this then everyone can act waywardly. Sometimes we experience this in meetings as well. For instance an argument breaks out and on an issue on which the members cannot reach a consensus that person tells something to the other person, while the other person says something else, of course you come into the scene and tell them how it is, and guide them on a legal issue. When you tell them that this is how it must be according to the law and that there are some issues you are unaware of they end their argument and decide in favor of the point provided by you.

> DG2 (South): For me the most spoken, discussed issue has born with it a problem or an approach that has been unfair to our friends who have sincerely contributed to the functioning of these Boards. I am not claiming that every single civil administrator who has presided over the provincial and district human rights boards to have done so with great effort, great sincerity and selflessness. However a considerable number of civil administrators, deputy governors, district governors have a considerable amount of experience in this regard, and have really opened important doors and windows, and have shown very sincere efforts. You asked a question regarding budgets just now; I mean without a source of income in their hands they nevertheless have been effective in promoting the Boards along with certain persons and institutions, relations, by using their reputability, certain documents, published material, etc, as well as move these Boards towards a new field of activity. This is my first evaluation. My second evaluation is this…Imagine a new institutional structure. You have started on a new road, the public is foreign to the issue, the state is also foreign to the issue, institutions and organizations are coming into contact with a new institution, new demands, new questions and new orders. Acceptance of this is difficult. Especially in societies like ours. Where did it come from all of a sudden? We already have 4483.[20] We already have judicial bodies. We already have disciplinary institutions. If you do not like it you can go to the courts, where did this come from. I mean in an environment where such a perspective is dominant you start on

[20] Reference here is to the Law numbered 4483 on "The Prosecution of Civil Servants and other Public Officials" dated 04/12/1999.

> a new path, a new institutionalization and you ask new questions to institutions and persons. What is this? Assess the complaint. Answer me according to this and this article of the Regulation…Now to do this you need authority. You cannot do this through an administrator outside of the state. IN order to operate mechanisms for the protection of human rights in a province, you can only do this with state authority, a person or institutions that has state authority.

Asked specifically whether the Board members should choose their own president, a DG from an Eastern province replied: "The Board would not be effective in determining their own president. Problems would arise between local people. Politics would enter into the calculation. DGs play a more objective role. Plus, public officials are shown more respect". In fact, certain DGs argued that any effectiveness which the PHRBs could claim existed was a result of the PHRB being affiliated to the state and directed by a civil administrator, as the latter are very important sources of authority in provinces:

> We held a 3 day workshop in Abant. We discussed these issues and problems there. At that time, if I am not mistaken, someone representing the media of a member of the national consultancy board had a similar question. That is, does this not harm the neutrality of the boards? Why, what is the need? When this question came onto the agenda a very strong argument came about. At that time I said, I do not disagree. One of the members of the Board can be elected for this position as well. A civilian from outside the Board can also do it if this person has the necessary experience, if he/she is deemed to have the necessary qualifications, is elected, etc. I have no objection to this. But you must take into consideration the following. While a new restructuring process is continuing, and when your resources to facilitate and realize this restructuring is so limited, you need a clear authority that can manage the most effective and most widespread organization in Turkey, namely the state, as well as the institutional elements within this organization. The civil administrator will fulfill this need.

These are vital points, supported by the Provincial Administration Law (numbered 5442) adopted on 10 June 1949, which is critical in that it designates civil administrators as the highest ranking state officials in provinces, making them responsible for the administration of all public services deployed by the central administration including education, health, social and cultural issues, etc. with the exception of military and judicial matters. However, one DG, one chief clerk as

well as Dr. Deveci (academician who was previously a member of the Ankara PHRB), have also noted that the removal of the representatives from the General Directorate of Security and the Gendarmerie in an effort to civilianize the Boards, was actually an error:

> Dr. Deveci: In the old regulation it was stated that a representative would be sent to the Boards from the General Directorate of Security and the Gendarmerie. Later in the AKP administration it was decided to remove them because it was thought that it would be more in line with similar compositions in the EU and it was decided. Their attendance is not prohibited but they do not come of course. But in my opinion in the Turkish system, in its functioning it would have been better if they were present. We were able to obtain more results because a greater sense of responsibility was present. The answers may be late but at least we knew that we would definitely get answers.
>
> DG: These Boards have played an important role in bringing together CSO representatives and representatives of the state around the same table, and generate a discussion culture on such an issue and these allegations (human rights and human rights abuse allegations)…As you know in the 2001 Regulation there were state representatives in the boards as well. The General Directorate of Security and the Gendarmerie were included. I have referred back to those years in various of my speeches. Those were years when there were severe arguments, and contradictory viewpoints. I remember well, the deputy chief of police in charge of the anti-terror operation in Istanbul would attend…At first, the representatives of CSOs were tough and cold against Mr….And at every opportunity they would pose questions which were insinuating. The deputy Gendarme Commander also attended. Then I started realizing that some of the members of the Board would voice some of their most serious questions -questions that they would normally hesitate to pose- before, during or after the meeting by engaging in direct dialogue. They (representatives of law enforcement) started to stop underestimating certain issues within their routine practices. They started hearing about details of an event from a different channel separate from the reports of public officials. They took notes. They took notes on what and why they were being criticized…I think it was a good process. Later I always wished that it would have continued. I mean if we are going to change the public culture, the institutional culture, and create an new institutions with the belief that modern human rights relations and human dignity are the greatest values, we will do this together.

5.1.4. Proposed Solutions

In order to create this level of cooperation between state officials and CSO representatives and to thus increase the effectiveness of the Boards, however, certain conditions have been suggested and several solutions were proposed.

First, the interview contained questions that aimed to understand DGs perspectives on whether or not members should be paid for their attendance to the monthly meetings of the PHRB, and whether or not members should be given a type of immunity that would help them in confronting public officials with regard to alleged violations of human rights. Among the 12 DGs and one chief clerk who answered these questions, eight DGs (including all presiding over Eastern PHRBs) stated that attendance fees would be a good idea, as this would "encourage participation", "enable concentration", and "increase ownership". The four DGs who answered negatively all presided over Boards from the South and the Western provinces, and invariably pointed to the necessarily voluntary nature of work in the field of human rights, which such an attendance fee would contradict. Two of these four DGs noted that CSOs may fight over or "play any type of trick to get their hands on the money". The issue of immunity, on the other hand, received much less support by the DGs. Out of the nine DGs who answered the question directly, only one expressed an opinion in favor of immunity, noting that immunity should be granted and members should be "made to feel important", which would in turn attract more members to the Board. The other eight DGs expressed serious misgivings regarding the granting of immunity to Board members, frequently citing the possible "exploitation" of such immunity by Board members, and that they would be caught up in illusions of grandeur. One DG noted clearly that: "As it is not the case that Board members are placed in a position of direct responsibility for the work they undertake, I do not believe that there is a need for immunity". One of the eight DGs who expressed a negative opinion to the suggestion, however, left open the possibility for certain privileges to be granted to the Board members only in the context of their work, "on condition of not exaggerating it".

In line with the DGs support for an attendance fee, the DGs also overwhelmingly support the suggestion that the PHRBs should have their own independent budget, as the present contributions from the Governorship are insufficient to carry out the work envisaged, and poses other problems which were clearly stated by one DG:

> Not only should an attendance fee be given to members, but the state should procure a locale or a building…Of course the budget allocated will digger according to the workload…Without these no one takes ownership of the job done. In order to progress with our work I give my own car, or the lawyer gives his own car. The regulation is sufficient but when it comes down to implementation no one takes responsibility. Because it means both loss of time and money for the person. Think about it we are forced to go inspect the police with a police car. The Board should have its own car and computer. It should have its own internet. We have a chief clerk here. We conduct our work through our own internet. In this situation the correspondence conducted from within the governorship can be seen by other departments. There could be leaks from certain places in the administration.

Other suggestions in order to run the PHRB more effectively include more training for members of the Board both on general issues of human rights as well as more particular areas such as the proper inspection methods for detention facilities, the inclusion of more members with a legal background, and a more thorough inspection by Ministry of Interior inspectors. Regarding the latter point, one DG noted that while certain inspectors conduct their inspections in a very efficient manner, others are not so meticulous, and that an efficient inspection mechanism would encourage the DG in question to work more effectively. Another DG noted that without such hierarchical inspection, he acted in a more "relaxed manner", and that he would work more carefully knowing that he will be inspected. One DG, articulated the following suggestions for a more effective PHRB: "A more independent Board structure, budget, more time allocated to work by Board members, and that decisions taken should have be binding". Yet another suggestion was shared by a number of DGs was the necessity to keep the number of members at a certain level, as too many members meant that the working of the Board would be "affected negatively", that it would disrupt the "balance of the Board and its

effectiveness", and that difficulties arise when the number of members necessary to vote cannot be attained in meetings.

One of the more novel suggestions, stated by a DG presiding over an Eastern PHRB, involved the actual content of the human rights issues the Board should deal with rather than the structure of the Board itself:

> I believe that the Boards should focus more on social issues from now on, such as violence against women, environmental issues and living in a healthy environment. Political rights etc, they become things that surpass the agenda of the human rights boards, especially in this region for example.

CSO representatives interviewed on the issue raised points that were quite similar to those mentioned by the DGs. While expectedly taking a distant approach to the issue of attendance fees, CSO representatives overwhelmingly favored an independent budget, a more autonomous structure, and better training for members of the Boards. Those excluded from the Boards naturally put forward their CSO's membership to the Boards as a way to increase the effectiveness of the PHRBs. Commenting on the positive actions of their Boards, two women's CSOs who operate in very different social, cultural and political environments (one in the East and the other in the West) noted two very important points regarding the effective functioning of the Boards and a fruitful state-civil society cooperation. The İzmir Association for the Protection of Women's Rights representative placed emphasis on the language used in deliberating with state officials and other members of the Board:

> We participated in the training of police, in which the UNDP was involved as well. The police there thanked us and told us that they would like to clone us. Why, because we give them positive examples of what they have done as well, because we can learn these good examples from the field. When a woman complains the police is the first step of the state which protects her, and for the woman he/she (the police officer) is the state…We say that we understand the good intent of the police who tries to reconcile her with her family so that the family is not destroyed, but we tell them that preventing violence against the women cannot be effected by conciliation, but that the family can be kept intact only if the state shows its power and shows that it will help the women in need. As I said, we are positive on the

> one hand and tough on the other but when you show good things and appraise people or institutions for it and then show the mistakes then they take you to be a good guide and listen to you. We successfully managed this in İzmir...We really believe tha the language used is important, I mean it is important personally and with regard to representing our institution. Just like the language you use can be something that increases or decreases your respectability, it can increase or decrease the respectability of our institution in the eyes of the people. That is why I think the language used is very important. The communication course we took has been very beneficial for us.

A women's CSO to the East, after relating an experience of inspecting the detention center in which asylum-seekers were kept and observing how these conditions were "abhorrent", noted how the PHRB filed a report and was able to influence a "one hundred percent change" and remarked: "That meant it can work! Now this is a concrete example and when you seen this you are encouraged. If that place was fixed any place can be fixed. Then you start working with more vigor and passion". An oft-cited variable in interviews with DGs and CSO representatives, however, regarding the importance of the attitude of the DG presiding over the Boards, was emphasized by the CSO as well:

> Now our DG Mr. … is an incredible person. He looks at each and every single application, researches it, listens to everyone and considers every application. Let's say you came there and there is not application but you have heard something, let's say that for example that drugs are being sold in front of a school, something needs to be done about this. He even considers this an application and immediately contacts the relevant unit from the police to look into the issue. That is why Mr. … is a completely different person, he erases himself, he is not like a DG he acts like a member of the Board. This is very important, and this is exactly what we mean when we talk about participatory democracy, this should be it.

With regard to solutions to the effective functioning of the Boards, the case of Izmir is a good example for showing the flexibilities of the Board that can be used, as well as the potential problems the use of such arbitrary solutions and lack of oversight can yield. My visit to Izmir corresponded to a period in which the DG at the head of Izmir PHRB was changed, and the PHRB was running on its own, as the new DG had not arrived. I therefore interviewed the secretary (insan haklari masa sorumlusu) who was actually doing the job of the "chief clerk" of the Governorate

and who was actually a personnel of the Ministry of Finance. Hulya Keleş explained to me that she had volunteered to work for the job in 2000 when the PHRB was founded, and that she was working there ever since. She has been issued certificates of appreciation from the governorate on various occasions for her role in the functioning of the PHRB, and her job has evolved in 12 years to such an extent as to receive applications, and decide on the spot on which applications fit the mandate of the PHRB. A few months following the interview, I was informed by the Human Rights Presidency that Ms. Keleş had been removed from her job.

During the interview, Ms. Keles talked at length about the way in which herself and 3-5 members of the Board actually ran the Board. They were able to do this by two means. First, they created "commissions" within the Board and assigned the same individuals to nearly each one. They then drafted "regulations" for these commissions. Another way was to create the category of the "voluntary human rights advocate", through which they could include members who were either kicked out of the Bar Association, or those who were not tied to a specific CSO. Such liberties taken, however, were criticized by the representative of Mazlumder together with the representative of the AKP provincial organization. Both were very critical over the dominance exercised over the board by the 5 persons in all the commissions, and felt that they were isolated in the Board, especially through a continuous exercise of voting, which they decried as an action that could not be performed for deciding on the scope of human rights.

5.2. Concluding remarks

Any way one looks at it, the establishment of the Provincial and District Human Rights Boards in allegedly every province and district in Turkey, comprised of a range of non-state actors and mandated with the investigation and analysis of individual allegations of violations of human rights, should be viewed as an ambitious project. In explaining why such a large-scale endeavor was undertaken, the Prime Ministry Human Rights Presidency points to the state's adoption of a policy in favor of human rights as a result of propitious internal and external

factors. While the former included the acceleration of the creation of civil society organizations in the field of human rights as a result of the "rapid and complex socio-economic transformation" in the country in the post-1980 coup period, external factors are taken to mean the climate in favor of a human rights discourse created by the end of the Cold War in general and the EU accession process and conditionalities in particular. Admitting that the state viewed the development of civil society "suspiciously" in the past, the PHRBs are presented as the reflection of the new state policy favoring human rights and cooperation with civil society.

Notwithstanding the potential of PHRBs for the promotion and protection of human rights with the aid of local-level actors who would ideally be experts in their fields, the PHRBs have been criticized ever since their inception by academics and important actors in the field of human rights advocacy, chief among them being the Human Rights Association. The main contention against the PHRBs are stated as the lack of a legitimate legal basis for their creation, their lack of autonomy as evidenced by the fact that most of the members are chosen by the governorships, and their general lack of effectiveness due to the lack of an independent budget as well as qualified members who are trained in human rights law and practice, let alone more specific issues such as the inspection of detention facilities. In addition, the tenure of members of the Boards is not safeguarded.

Semi-structured interviews conducted in 17 provinces throughout Turkey with DGs heading the Boards and women's CSOs who are members or who aspire to be members of the Boards have revealed that the criticisms reflect the reality on the ground. Nearly all CSO representatives, as well as some DGs agreed on what makes the Boards ineffective, citing the lack of an independent budget, the lack of training of Board members, and problems caused by the rotation of the DGs and the lack of rotation of other members of the Boards. A few DGs have even agreed that the state should not be involved at all in investigating allegations of human rights violations, as the state itself was responsible for perpetrating such violations and that it would not be realistic to expect state officials to reprimand other state officials in this regard. Another widely shared opinion was the significance of the outlook and

views of the specific DG concerned. Time and again this variable was stressed as one of the most important factors for both an effectively operating PHRB and cooperation with CSOs, but both DGs and CSO representatives interviewed. In line with the shared views regarding the reasons for the ineffectiveness of the Boards, CSO representatives and DGs also proposed similar solutions: an independent budget for the PHRBs and more training for members of the Boards. While the DGs added the placing of a cap on the number of members to be admitted to the Boards as well as attendance fees for meetings to be handed out to members and more efficient inspection by Ministry of Interior inspectors to possible solutions to making the Boards more effective, CSOs added the necessity for their voices to be heard, the importance of creating trust with Board members and the DG, and the importance of communication techniques to create this trust.

The most important finding of the research, however, were the reasons given by Kurdish women's CSOs for insisting on being members to the PHRBs. This insistence was held in the face of and despite what these CSOs saw as discriminating attitudes by Governorships against admitting them to the Boards, on account of being feminist and Kurdish women. Such denial of membership is indeed difficult to explain in any other terms as the said CSOs were the most active and effective CSOs in the East and South East regions of Turkey. Moreover, DGs interviewed throughout Turkey, and especially in the regions mentioned above, placed emphasis on working with active, effective and publicly-endorsed CSOs whose work relates to the field of human rights. A general observation that can be derived from the research, however, is that DGs in general, but especially those assigned to posts in the East, are sensitive to the activities of what they term CSOs that are "ineffective" and which only want to be members of the PHRB for reasons of prestige, as well as CSOs that are "politicized" and therefore operating with an alternate agenda. This led certain DGs in the East to work with and lend their support to CSOs that were "safe" in the sense that they would generally be involved in charity work and could be counted on not to disrupt the status quo. Coupled with the general low regard for CSOs' capacity and ability to cooperate with one another, DGs presiding over Eastern PHRBs were seen to hold a high regard for the

involvement of a civil administrator as president of the Boards. It is important to mention here, however, that a clear definition of the roles of the President of the Board is not available, and the weight of the post is more symbolic rather than clearly demarcated, in the sense that in many PHRBs the "final word", so to speak, is seen to be the prerogative of the DG.

The reasons for the insistence of CSOs to participate in the PHRBs is largely due to a combination of the belief in their ability to effect change and their acceptance that to do so on any meaningful level requires the cooperation of the state. Especially KAMER, which has stated that it pursues membership to the Boards as a policy, repeatedly noted the possibilities that become available when working with the state, and the fact that successful operations and concrete results achieved have convinced them that they could enter these Boards, change the mentality of the Board members towards women's human rights, and effect real change on the ground, with the help of their local knowledge and expertise. The necessity to involve the state comes into play due to the fact that the state holds the means to law-enforcement and administers shelter and detention facilities, which the PHRBs are given the power to inspect. Moreover, the fact that the Governorship is an important actor in the PHRBs is said to empower its members when dealing with other state institutions, as well as give weight to the decisions reached in the Boards, leading to the effective implementation of decisions which would otherwise fall on deaf ears. Another crucial reason given was the importance of PHRBs as local platforms, in which local problems could be brought to the table and deliberated. What is more, such a local level platform was viewed to be the most suitable arena in which to communicate effectively with such a wide-range of actors, and create networks which could be used outside of the specific meetings of the Boards. The specific example of the Izmir Board also shows the flexibility that could be employed in local-level institutions, especially with regard to the creation of commissions, rules for these commissions and making use of "voluntary human rights advocates".

Whether categorized as a “CSO acting for the public good” or falling under CSOs that are categorically denied membership for holding a membership base or advocating issues that are seen to be problematic to state officials in the specific environment these DGs are responsible for, women’s CSOs who have placed their faith in the ability to change discourse through deliberation in local level platforms and trusting their local-level support and expertise to do so seem to report the most success in their work within and through the PHRBs, despite the fact that the Boards are not independent from Governorships in the manner required by the Paris Principles. In fact, women’s CSOs who have reported success in implementing the decisions of PHRBs or through networks established via the Boards, also speak of their close cooperation with law-enforcement bodies, who were registered as members in the Boards until the 2003 Regulation removed them, a move that is now regretted by certain DGs.

CHAPTER VI
DEBATING THE PARIS PRINCIPLES AND THE HUMAN RIGHTS INSTITUTION OF TURKEY

6.1. An over-reliance on the Paris Principles?

That Turkey's efforts to institutionalize human rights have fallen short of the Paris Principles, arguably until the establishment of the HRIT, has been underlined in convincing fashion by CSOs and human rights advocacy groups. The reliance by human rights advocates on the Paris Principles as guidelines for Turkey's experiences in this area is understandable, given such experiences as the HRAC affair, which have reinforced the belief in the necessity to uphold these principles in the strictest manner possible, especially when taking into consideration the apparent efforts of the Turkish state to continually limit the autonomy of the institutions it creates, economically, politically and legally. Such reliance is a clear manifestation of the "boomerang effect". This term was coined by Keck and Sikkink (1998) in order to describe the way in which domestic groups, including national oppositions groups, CSOs and social movements form connections with transnational networks and international non-governmental organizations (INGOs) "who then convince international human rights organizations, donor institutions, and/or great powers to pressure norm-violating states" (Risse and Sikkink, 1999, p. 18). This serves to create leverage in favor of the domestic groups against states who are in the process of internalizing international human rights norms. Applied to the case at hand, this theory can be slightly modified to show how human rights advocacy groups in Turkey have used the Paris Principles, which as shown above have been increasingly become standards or "norms" of practice due to increasing and consistent efforts of UN agencies and treaty bodies in spreading these Principles, in order to point out how the Turkish state's efforts to institutionalize human rights

have been insincere and inadequate. Although this boomerang effect is seen as an inevitable, and in fact at times useful, intervention by domestic human rights advocates for the socialization of international norms (Risse and Sikkink, 1999, p. 20), it can be said that in Turkey such a boomerang effect has relied excessively on these Principles, and has therefore hindered effective and constructive cooperation between the "state" and "civil society" on the matter.

Two points can be presented to substantiate this argument. The first is that human rights advocacy groups have lost sight of the fact that the Paris Principles are actually the results of negotiations between states. Its wording, therefore, reflects the pragmatic concerns of the states, as well as the intention of the United Nations to keep it thus in order to encourage its spread throughout the world with as little contention as possible. Conformity with these Principles should also not be seen as the only way in which national institutions can be effective, or crucially, should not blind us to the way in which these entities can *develop* into effective institutions over time. The second point is that over-reliance on the Paris Principles may lead to the state actually forming an institution which, very broadly, may conform to these Principles, but which may in fact result in the "centralization" of the institutionalization of human rights, meaning that the state may be able to legitimize its efforts to increase its power of selectivity (with regard to which human rights CSOs it will cooperate with and which human rights issues it will look into) by using such reliance on such vaguely worded international standards. This is the "trap" to which human rights advocacy groups have unintentionally fallen with their outright rejection of the creation of the HRIT, and the concomitant misplaced strategy to refuse to engage in the process; whereas doing so may have yielded (and still can yield) an optimum combination in which the experience of the PHRBs could be integrated into the workings of the HRIT.

To elaborate on the first point, it is necessary to acknowledge the deliberate vagueness of the Paris Principles. This is most clearly seen in an oft-cited sentence, first appearing in the Vienna Declaration and Programme of Action arising from the

1993 United Nations Conference on Human Rights in Vienna that first endorsed the Paris Principles:

> 36. … The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

The point was repeated, word for word, in Paragraph 12 of the General Assembly Resolution (A/RES/48/134) adopting the Paris Principles:

> 12. [The General Assembly] Encourages the establishment and strengthening of national institutions having regard to those principles and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level.

The actual form which national institutions should take is therefore left to the prerogative of states. The Paris Principles should be seen as guidelines to ensure the effective implementation of the function of promoting and protecting human rights in a country. In effect, the standards are broad enough that it may not even be possible to objectively assess whether or not a national institution in question can fulfill these broad requirements:

> For example, how does one measure whether a national institution is adequately funded? In principle, the very nature of these institutions as promoters and protectors of human rights requires them to constantly broaden and deepen their activities. As a consequence, it is hardly possible to find an institution, which could not make use of some additional funds to intensify its work. Furthermore, sometimes the requirements of the Principles may seem simply impossible to fulfill. How does one ensure, for instance, that the pluralistic composition is truly representative of all social groups? If a country is composed of twenty different ethnic groups, can a national institution be truly representative unless representatives of all of these groups are present? (Pohjolainen, 2006, pp. 25-26, footnote 42).

The reason why these Principles are so vague and broad is due to the fact that it was impossible to draw guidelines that would be compatible in all national contexts throughout the world. This fact necessitated a compromise; one which most governments could support (Pohjolainen, 2006, p. 14). It is worth repeating an

argument already made in terms of the spreading of NHRIs through the efforts of the UN. Although the increasing involvement of the UN through its various institutions in promoting these Principles has served to turn these standards into internationally accepted norms that are easily and more concretely identified (especially via ICC ratings and the work of the UNDP and OHCHR as discussed in Chapter III), these agencies and institutions themselves have had to water down the Principles for pragmatic reasons, most notably in order for these standards to be accepted by countries that would normally not be identified as having accountable liberal-democratic institutions. Other plausible explanations that made possible the spread of NHRIs should also be considered. For instance, arguing that part of the success of the UN in diffusing national human rights institutions throughout the world was due to its broad definition of the concept of an NHRI, Cardenas notes that the notion of building NHRIs appealed to various kinds of states: to "transitional states" undergoing regime change and seeking to establish democratic institutions; to "hypocritical states" trying to portray themselves as committed to human rights while violating these same principles; and "late-bloomer" states that have a relatively good human rights record but face domestic and international pressure to "join the NHRI bandwagon" (Cardenas, 2003, p. 35; ICHRP, 2000, p. 1). Pragmatic reasons could have also existed on the side of the UN. Pohjolainen, for instance, states:

> By channeling the assistance to independent institutions the UN could also create a 'human rights space' in countries where the government's commitment to reform was weak or uncertain while avoiding the risk of being criticized for supporting abusive government agencies or for wasting resources (2006, p. 70).

This is why, despite the very formal procedures adopted by the ICC such as status granting, it has opened its doors to various different types of NHRIs, including for instance ombudsman institutions that are traditionally single-person bodies. The Azerbaijan Human Rights Commissioner, for instance, accredited with an "A" status in 2006 and re-accredited with the same status in 2012 is just such an example (ICC Chart of the Status of National Institutions – Accreditation status as of May 2012). Moreover, NHRIs such as the Australian Human Rights Commission

which are composed of “technocratic” experts rather than of the representatives of civil society, have also been given “A” Status by the ICC (Pohjolainen, 2006, p. 26, footnote 49; Eşsiz, 2009, par. 247). Moreover, although the Paris Principles clearly state that government representatives should only be involved in the national institutions in an advisory capacity, the Presidency of the ICC in 2003 was run by the Moroccan national institution, which was criticized for having several representatives of the government with full voting rights (Pohjolainen, 2006, p. 26, footnote 49).

Richard Carver’s report for the International Council on Human Rights Policy makes an even more striking argument against the over-reliance on Paris Principles. Carver notes that discussions of NHRIs have been legal and largely normative, and therefore relied on the implementation of the Paris Principles “rather than on the broader political dynamics of the role and effectiveness of human rights institutions” (2000, p. 2). An emphasis has been made, therefore, to propagating normative standards rather than looking at practice and seeing the ways in which human rights institutions have evolved working in the field (ICHRP, 2000, p. 2). Carver notes that certain NHRIs in conformity with the Paris Principles have been "completely ineffective, while others that had little independence and inadequate funding have made a positive impact on the human rights situation in their country" (ICHRP, 2000, p. 3). For instance, Mexico and Indonesia are given as examples where "the old thinking" tied to the corporatist system "lingers on" despite the inauguration of a more open and democratic order, and how in these countries the governments, along with the public and staff of the commissions themselves still tend to perceive themselves to be "beholden to the executive" (ICHRP, 2000, p. 57). The most important point made by Carver, or at least the most relevant one to the thesis at hand, is that the effectiveness of NHRIs depend on their ties with the government, as much as their legitimacy in the eyes of the public. Criticizing NGO activists whose arguments "amount to saying that NHRIs are not NGOs", Carver notes that if they were, their effectiveness would be limited:

> Not least of all, to be effective they must gain a degree of trust from those working within government, as well as in civil society. This does not mean compromise with those who violate human rights. It does mean pragmatically understanding the constraints within which government operates and helping to design solutions to protect human rights in the real world within which they operate. National institutions at their best should act as a conduit through which the grievances of civil society are brought to the attention of government. They can only do this effectively if they stand somewhat apart from civil society (2000, p. 58).

Although this may sound like stating the obvious, the debate surrounding the establishment of the HRIT below will show that this is a valuable insight with regard to the criticisms made by CSOs in Turkey. The fundamental problem is, it seems, the inability to come to terms with an institution that, by definition, needs to stand between what are perceived to be the separate spheres of the state and civil society. Smith, for instance, noting that NHRIs need to realize that they are not NGOs, cautions against being influenced by particular interest groups, and states that "NHRIs have a different status in the community and different tools at their disposal to hold the state and other bodies accountable for violating human rights standards" (Smith, 2006, p. 932). Carver completes the argument by noting that one of the most important assets of an NHRI is its ability to exercise statutory powers to "compel the disclosure of information or the appearance of witnesses" and that "Equally, when a human rights institution reports on violations this constitutes a form of official acknowledgement which is different in quality from reports by non-governmental human rights bodies" (ICHRP, 2000, p. 58). The NHRIs have the power, therefore, of acting as mediums through which the government can acknowledge its shortcomings in the promotion and protection of human rights, whereas criticizing from the benches, so to speak, outside of any desire for the government to acknowledge these claims, while easier, has not had and will not have the same effect. Unfortunately, this has been the policy with one of the major human rights advocacy groups in Turkey in terms of effectiveness and expertise, namely the Human Rights Association, which has categorically rejected working with the PHRBs due to their connection with Governorships.

Anne Smith reiterates the fact that most NHRIs are financially dependent on government, and that it is crucial for NHRIs to establish a positive working relationship with government departments, as failing to do so "results in failing to influence and sensitize government officials to human rights issues" (2006, p. 942). Smith goes on to give the example of the NIHRC in Northern Ireland, which was perceived to be deliberately avoiding proximity to the government, and therefore lost the "direct track into the Government machine" enjoyed by its predecessor, the Standing Advisory Commission on Human Rights (SACHR) (Smith, 2006, p. 942).

Refusal of CSOs to deal with the state, and an over-reliance on the Paris Principles, places the state in a propitious situation whereby it can create an NHRI that is compliant with the Principles, due to the latter's broad and vague nature. The "hypocritical state", therefore, can use the Paris Principles to counter criticisms by CSOs in a devastating fashion, namely by strengthening their bid to be the voice of human rights, that is, exactly that which the CSOs fear. In other words, the state can use the legal façade of conforming to the Principles, while in fact centralizing human rights advocacy into its own grasp:

> …in cases where governments are using NHRIs primarily to improve their international images and co-opt local human rights groups, there is a danger that the state will move to displace non-state actors. This would explain why national governments might agree to create institutions that monitor the very international norms they violate. Likewise, as NHRIs acquire more formal international powers, they may begin to compete directly with nongovernmental groups for resources as mundane but as important as speaking time in international forums. Domestically, NHRIs could help states occupy the "space" now filled by societal groups, thereby controlling the human rights agenda and silencing calls for accountability (Cardenas, 2003, p. 37).

One very important point needs to be underlined here, however, so as to highlight that this does not contradict the ontological premise of the thesis, namely that the state is a relational entity, without an essence and strategy of its own that is divorced from the "actions" of civil society. Although the risk pointed to by Cardenas is true -and it will be argued that this is the main risk, not yet realized, in the creation of the HRIT- this can only be the case if the actions of human rights

advocacy groups leave the field empty for the state to take over the reins of this advocacy, by legitimizing its centralizing efforts through the tool used by CSOs, the Paris Principles. The zero-sum scenario based on the ontological separation of the "state" from "civil society" is thus made a reality. The perceived divide between the state and civil society, however justified it may be, becomes a self-fulfilling prophecy.

In many ways, this is what has transpired following the debates on and the final establishment of the Human Rights Institution of Turkey (HRIT).

6.2. Debates Surrounding the Human Rights Institution of Turkey

On 28.01.2010, a law for the establishment of the Human Rights Institution of Turkey was submitted to the Parliament. The General Justification of the draft law explicitly makes reference to the Paris Principles outlining the "fundamental standards and general framework regarding national human rights institutions", as well as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in its role as an accrediting body with regard to the fulfillment of Paris Principles. Following further reference to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as well as the Racial Equality Directive (2000/43/EC), and with a further note that the Paris Principles does not specify a model to which countries must comply and that every state has the right to choose which type of model would be most suited to its own needs and characteristics, the following justification is made:

> Despite the widespread institutionalization of human rights in our country, as mentioned briefly above, the lack of an organization in line with the Paris Principles has been criticized at the national level by various institutions and organization and primarily by the EU progress reports at the international level.

> The Law Regarding a Human Rights Institution in Turkey has been prepared with the purpose of establishing a human rights institution in line with the UN Paris Principles.

As can be seen, the Government acknowledged the Paris Principles as the non-binding international standards for national human rights institutions as well as the lack of organizations in Turkey that conformed to these principles, and underlined that the HRIT Law was drafted in order to fill this gap. The right of each state to choose a model that suited its "needs and characteristics" was not forgotten, however, and was noted in the General Justifications.

Following deliberations in Parliamentary Commissions and Sub-Commissions where academicians and CSOs expert in the field participated, the Law was ratified by the Parliament General Assembly on 21.06.2012[21]. The Law, however, has been heavily criticized by academicians and human rights advocates. These criticisms can be summed up by categorizing them under three broad and interrelated headings:

[21] The Parliamentary processes through which the Law passed is as follows: the Law was presented by the Council of Ministers to the Presidency of the Parliament on 28/1/2010. However, since no action was taken until the 2011 General Elections, it was left to the new Cabinet to resend the Law Proposal to the Presidency of the Parliament on 5/3/2012. The Presidency of the Parliament then sent the Law Proposal to the Planning and Budget Commission and the Constitution Commission, both designated as secondary commissions, and to the Parliamentary Commission for the Assessment of Human Rights, designated as the primary commission, on 15/3/2012. The primary commission, meeting on 5/4/2012, decided to create a sub-commission, which met six times during the months of April and May. The participants in these meetings were as follows: Prime Ministry, Ministry of Interior, Ministry of Finance, Ministry of Justice, Ministry of Foreign Affairs, other related public institutions along with representatives from Hacettepe University, Institute of Public Administration for Turkey and the Middle East, Union of Turkish Bar Associations, Ankara Bar Association, Diyarbakır Bar Association, İzmir Bar Association, Human Rights Association, Human Rights Foundation of Turkey, Helsinki Citizens Assembly, Amnesty International Turkey, Association for human rights and solidarity with the oppressed (Mazlumder), Foundation for Research on Society and Law, as well as academicians and experts including Baskın Oran, İoanna Kuçuradı, Vahit Bıçak, Kerem Altıparmak, Yılmaz Ensarolu and Şanar Yurdatapan (Parliamentary Commission for the Assessment of Human Rights Report, number 279: 10). The sub-committee finalized its report on 4/6/2012, and the primary commission met on 6.6.2012 and voted, via majority decision, in favor of the Law, which was finally ratified in the Parliament General Assembly on 21/6/2012.

1. The Law does not comply with the Paris Principles;

2. The Law is nothing more than an effort by the state to pay lip-service to the international community in general and the European Union in particular;

3. The Law reflects an effort of the state to control the field of human rights advocacy and subsume outspoken CSOs.

Each of these claims will now be dealt with critically, and in many cases by playing the devil's advocate, in order to make the point that each of these criticisms come from a reading which relies on the functionalist separation of the state from civil society, and therefore contributes to this separation in practice. A relational reading, however, can instead show the potential of working with, through and within the HRIT due to an appreciation of the way in which, potentially, it may grow into the most effective mechanism for the promotion and protection of human rights in Turkey.

The issue of over-reliance on the Paris Principles was mentioned with regard to the PHRB experience, where it was argued that the PHRBs were incompatible with these international standards, but that this should not immediately translate into ineffectiveness. While CSOs seem to have fallen into a complacency in using the Paris Principles and rejecting ten years of PHRB experience, which although by no means everywhere, was able to generate important cooperation networks between the state and civil society in certain provinces, the Government responded, as shown by the heavy emphasis on the Paris Principles in the General Justification of the Law on the Establishment of the HRIT, with the creation of a national institution purportedly in line with the Paris Principles. As the HRIT was actually in line with the basic minimum standards outlined in the Paris Principles, human rights advocates criticized the law through a broader reading of these Principles, adding, when necessary, their interpretations of the "spirit" of the Principles, additional conditions that need to be taken into account such as the ICC's reading of the Principles, and at certain points the view that the specific situation in Turkey

requires more specific standards than mere adherence to the Paris Principles would command.

The Human Rights Joint Platform, made up of the most effective human rights advocacy groups active in Turkey including the Human Rights Association, Human Rights Foundation of Turkey, Helsinki Citizens Assembly, Amnesty International Turkey, and Association for Human Rights and Solidarity with the Oppressed (Mazlumder), as well as non-Platform members, such as Human Rights Watch, have published several statements prior to ratification demanding that the Government withdraw the Law based on their contention that the Law was not drafted with their participation and that in its current form the Law could in no way be independent from the Government. Although important points are raised in these declarations, two of the more academic assessments (which cover all the points contained in the CSO declaration in any case) of the Law will be taken into consideration here. The first is the paper written by Kerem Altıparmak for the Faculty of Political Science of Ankara University entitled "Last Exit from the Bridge: A Critical Assessment of the Draft Law on the Institution of Human Rights of Turkey". The second source will be the "Chapter 23 Peer-Review Mission: Human Rights Institutions 17-21 January 2011, Ankara, Turkey" written by Kirsten Roberts and Bruce Adamson. It should also be noted that criticisms against specific provisions of the Law cite the "Law Proposal" sent by the Council of Minister to the Parliament, and not the Law that was finally ratified. The changes made in the latter will also be taken into consideration in the following analysis.

The arguments made against the Law using the Paris Principles can be broken down into five headings, signifying the necessity for:

- A foundation in national law;
- A broad mandate;
- Pluralism;

- Independence/autonomy;
- Effectiveness.

The Law on the Establishment of a Human Rights Institution of Turkey, is, as the title suggests, a law, and therefore, unlike the PHRBs, which were established by a regulation, therefore being easier to repeal or amend, its legal basis is secured. While welcoming this fact, Roberts and Adamson (2011, p. 9) warn against amending any core components of the HRIT via secondary legislation. Legally speaking, however, secondary legislation cannot amend primary legislation, as Article 124 of the Constitution of Turkey states:

> By-laws
> ARTICLE 124. The Prime Ministry, the ministries, and public corporate bodies may issue by-laws in order to ensure the application of laws and regulations relating to their particular fields of operation, provided that they are not contrary to these laws and regulations.
> The law shall designate which by-laws are to be published in the Official Gazette.

Conformance with the "broad mandate" requirement of the Paris Principles, however, has been seen to be lacking. The provision of the Law which sets out the duties of the Institution also provides, in very broad terms, its mandates. In the ratified version of the Law the related provision, however, has been changed from its original form in the Law Proposal. The previous version was as follows:

> Establishment and mandate
> Article 2-
> (2) The Institution is tasked with and given the authority to monitor and evaluate developments in the field of human rights; work towards finding solutions to problems; assess, research and follow-up complaints and applications; conduct work towards the protection and development of human rights and the prevention of violations.

The final version of the Law puts the mandate of the HRIT in slightly different terms:

> Duties and competences:

> Article 4- (1) The Institution is tasked with and given the authority to conduct work towards the protection and development of human rights and the prevention of violations; combat torture and degrading treatment; assess complaints and applications and follow-up on results; take initiative towards finding solutions to problems; conduct training activities for this purpose; conduct research and analyses in order to monitor and evaluate developments in the field of human rights.

Besides the obvious addition of the duty to "combat torture and degrading treatment" so as to present the HRIT as also fulfilling the requirement to establish a "National Preventative Mechanism" under OPCAT, which Turkey has ratified on 27/9/2011, the new provision, while keeping all duties articulated in the previous version, lays a greater emphasis on promotional activities such as training, analyses and research as well.

A point that needs to be underlined here in order to grasp how the Institution is organized is that the above duties and competences are those set out for the HRIT as a whole. More specific duties and competences are put forward for each organizational unit of the HRIT. The HRIT is made up of a Human Rights Board, and a Presidency (Article 9). The former is the decision-making body of the institution, and is composed of a President, a sub-President and eleven members. Among the duties of the Board are, *inter alia*: to determine areas of activity and priority tasks; to monitor the implementation of international human rights treaties to which Turkey is party and to contribute to reports to be presented to treaty bodies; to cooperate with regional NHRIs and UN bodies; to prepare and distribute annual reports evaluating the problems and developments in the field of human rights; to conduct visits to detention facilities when necessary with three member commissions; to conduct campaigns and programs with public institutions and CSOs to encourage the development of human rights and the prevention of violations; to decide on the reports, analyses, strategic plans and budget allocation.

The Presidency is the executive branch of the HRIT, and is made up of the President of the HRIT, the vice-President, service units where the “specialists” (civil servants) will be employed and working groups (Article 9(1)). Issues

regarding the Presidency will be discussed under criticisms that fall under the "effectiveness" category.

According to critics, a few crucial points within the "broad mandate" principle are not fulfilled. The first is the requirement, as written in Article 3 of the Paris Principles under the heading Competence and Responsibilities, for a national institution to publish proposals and reports (without the need to obtain permission to do so) containing analyses regarding the conformity of national legislation and administrative provisions with the fundamental principles of human rights, and recommendations and amendments of legislation, if necessary. Critics note that such a power is not given to the Board (Altıparmak, 2010, pp. 10-11) or that it is unclear whether such power is available to the HRIT (Roberts and Adamson, 2011, p. 18). Both Altıparmak (2010, p. 10) and Roberts and Adamson (2011, p. 18) concede that such an authority is given to the Legal Service Unit within the HRIT. Indeed, Article 11(1)c(1) stipulates the following with regard to the duties of the Legal Unit:

> To deliver opinions and make recommendations on draft legislation, legislation, practices and other legal issues regarding human rights to relevant persons, institutions and organizations or the public upon request or ex-officio.

Nevertheless, this is not seen as enough by the critics. Altıparmak notes, for instance, that the above provision for the Legal Unit does not make clear whether the legislation mentioned includes amendments to the Constitution, and that it is unclear whether such an option is possible ex-officio as a result of applications made (2010, pp. 10-11). In addition, Roberts and Adamson stress that while the legal department has the power to provide opinions, "the draft would benefit in our view from the specification of an explicit power of the institution to provide and publish advice as it sees fit" (2011, p. 18). As can be seen, the emphasis in not on conformity with the Paris Principles *per se*, but rather on certain details that could be added to clarify the provisions. The point made by Roberts and Adamson, however, is unfair, as even in the draft law which they were analyzing, it is stated clearly that one of the duties of the Board is to prepare, publish and distribute

annual reports evaluating the problems and developments in the field of human rights in general and the performances of public institutions in this area in particular, and to publish special reports on human rights when necessary (Article 4(h) in the draft version -DV- of the Law, Article 7(e) in the ratified version -RV-).

With regard to assessing domestic legislation against international standards, the Law gives the Board the following duty:

> c) To monitor the implementation of the international human rights treaties to which Turkey is party. To contribute with opinions to the reports which the State is obliged to present to the evaluating, monitoring and supervising mechanisms established by these treaties, making use of the help of related civil society organizations; to participate in the international meetings where these reports are presented via a representative (DV 4(f), RV 7 (c)).

The corresponding articles in the Paris Principles are as follows:

> b.To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
>
> d.To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.

Roberts and Adamson understand the relevant provision of the HRIT law as giving the HRIT the function of shadow reporting, which it welcomes. However, they go on to say that this is not enough to ensure the compliance of national law with international human rights standards (2011, p. 18). However, even if the duty to monitor the implementation of the international human rights treaties to which Turkey is party and the duty of the legal unit mentioned above is not interpreted as ensuring the compliance of national law with international, Article 90 of the Constitution makes such compliance obligatory:

> Article 90:
> …International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a

> conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

This information may not have been available to foreign experts. Altıparmak, for instance, does not use this line of argument. Instead, he refers to another line of argument, one that he uses consistently throughout his paper. Altıparmak argues that one should not expect too much from the Turkish context, and therefore the provision in the Law for the Legal Unit which allows it to make recommendations on legal issues to "relevant persons, institutions and organizations or the public upon request or ex-officio", as history has shown that even when such powers are granted, they are never used. He gives the example of the Parliamentary Commission for the Assessment of Human Rights, which is given a clear and non-debatable right to ensure the compatibility of domestic legislation with international treaties and propose legal amendments to do so, but which has never been assigned as a primary or secondary commission to deliberate any law proposal (Altıparmak, 2010, pp. 31-32). Obviously, this criticism has little to do with the content of the Paris Principles. Nevertheless, it is worth mentioning that the situation has changed. Recently, in May and June, the Commission was assigned as the primary commission to deliberate on the very Law on which Altıparmak's paper was written, as well as the secondary commission for the Law on Foreigners and International Protection.

Another point mentioned by critics that can be placed under the shortcomings related to the necessity for a broad mandate is the competences given to the HRIT regarding investigations. The Law gives the Unit on Combating Torture and Ill Treatment the duty to conduct regular visits (upon notice or without notice) to places where people are detained or where people are placed under protection (shelters), and to present reports concerning these visits to relevant institutions and to make public these reports if seen necessary by the Board (DV 6(1) b(2); RV 11(1)b(2)). Besides the contention that this Article does not fulfill the requirements of OPCAT, the objection to this provision is that it is unclear where visits will be

made, what is to be understood from the term “regular visits”, and what will be evaluated during the visits (Altıparmak, 2010, p. 11). The Peer Review Mission, on the other hand, notes the provision in the Law (DV 7(4); RV 13(2)) which stipulates that visits that can be conducted by teams assembled by the President of the HRIT from relevant institutions, and notes that external bodies that are involved in investigations should not impact the independence of the institution (Roberts and Adamson, 2011, p. 19). Once again, it can be seen that the concerns of the critics are based on what could happen in view of the lack of details in the Law or risks that the HRIT may meet with regard to its independence. These are, once again, outside the immediate provisions of the Paris Principles. Furthermore, an important addition has been made to the Law in this matter, which should also alleviate concerns regarding how effective investigation could be if they are conducted by specialists. Article 7(f) of the final version of the Law gives the Board the power to conduct visits, when necessary, to places where people are deprived of freedom or where they are held for protection, through the formation of three member teams.

Critics also underline the necessity for the HRIT to be able to deal with all manner of human rights violations. The Peer Review welcomes that the intention of the Law to accord the HRIT with a broad human rights mandate, but notes that “human rights” should cover all rights contained in international human rights treaties and conventions to which Turkey is party, and in particular, the rights contained in the Charter of Fundamental Rights of the European Union (2011, p. 17). There are a couple of contentious points here. The first is that Turkey is not yet a member of the European Union, and is therefore not obligated to cover the rights contained in the Charter of Fundamental Rights of the European Union. This recommendation has been inserted, undoubtedly, due to the Peer Review being conducted through the funds of TAIEX (Technical Assistance Information Exchange) which is an instrument for short-term assistance in the adoption and enforcement of the EU acquis. Secondly, while the concept of human rights is not elaborated or detailed, it must be noted that there are no restrictions either to what is to be understood by the term. However, even if there were limitations, the UNDP-UNHCR toolkit, as discussed in the section on Paris Principles above, state that: "Such limitations do

not, in themselves, mean that the NHRI is not in conformity with the Paris Principles" (2010, pp. 243-244).

Regarding pluralism, the Peer Review cites the Sub-Committee on Accreditation's emphasis on the importance of pluralism and the necessity to ensure the meaningful participation of women, and states that "the current law does not go far enough to ensure pluralism of representation". While it is true that there is no specific mention of a gender balance in the Law, Article 5(6) of the Law stipulates that:

> In the selection of Board members, special attention will be paid to ensure the pluralistic representation of civil society organizations, trade unions social and occupational organizations, academicians, lawyers, members of the visual and written press, as well as experts, who work in the field of human rights.

Trade unions, academicians, lawyers, members of the visual and written press, as well as the sentence "who work in the field of human rights" are all new additions to the provision (compare with DV 3(4)).

The issue of ensuring pluralism in the composition of the Board leads into another crucial issue which the critics of the Law are justified in emphasizing, namely the issue of the independence/autonomy of the HRIT. The independence of the institution revolves around the issues of the HRIT's ties to the Prime Ministry, who will be responsible for appointing the Board members, the protection measures stipulated for the Board members, the meaning behind the transfer of personnel from the Human Rights Presidency, and the kind of financial autonomy envisaged for the HRIT.

A crucial provision in the Law with regard to independence/autonomy of the institution, and one to which Government representatives continuously refer, is the following Article:

> The Institution shall fulfill the mandate and use its competences accorded to it herein and in other legislation under its own responsibility and independently. No body, authority, station or person can order or instruct

> the institution, or present it with recommendations or suggestions (DV 2(3); RV 3(4)).

The wording of the provision, even prohibiting any "recommendations or suggestions", is very strong. The Peer Review team, however, does not find it sufficient, and point to the perplexing provision in the Law which stipulates that the HRIT is "affiliated" with the Prime Ministry. Tying this issue with the appointment of the Board members, the authors reluctantly state:

> Affiliation and accountability to the Prime Minister, and appointment by the Council of Ministers may not be in line with the spirit of the Paris Principles, especially the need for independence. Linking the NHRI to the Prime Ministry may impact upon both the actual independence of the NHRI and the perception of its independence (Roberts and Adamson, 2011, p. 9).

In order to clear up the issue, it is necessary to look at Turkish administrative law, which tells us that there are three ways in which an institution can be founded under the auspices of the state, and thereby be tied to a ministry: "connected" institutions, "related" institutions and "affiliated" institutions.

Connected institutions are those institutions which, due to the specialty area in which they work as well as the significance attributed to the area of their work, are established through a special law, or rather, a law specifically drafted for their creation. These are accorded separate budgets within the general budget or are given their own special budgets. Certain connected institutions are not given legal entity status separate from the state legal entity status. A good example is the General Directorate of Security. The connected institutions that are separate public legal entities are special service institutions that provide a specialized service (meaning a service requiring technical knowledge and expertise that cannot or should not be undertaken by the central administration) throughout the whole country or from a certain location (Günday, 2011, p. 531). The most important point regarding connected institutions is that the relationship between those that are not public legal entities with their respective ministries is a hierarchical relationship (Günday, 2011, p. 399). According to the hierarchy principle in Turkish

administrative law, subordinates do not implement the legislation according to their own understandings of it, but rather according to the understanding and guidance of their superiors. The relationship between connected institutions that are public legal entities and the ministries they are connected to is one of administrative tutelage, which is defined by the Council of State in the following manner:

> As a public law institution, administrative tutelage is a limited authority given to central administration in order to supervise local administrations regarding their decisions on enforcement, administrative procedures and actions in light of the interests of the state and the local population (Atay, 2009, p. 175).

"Related" institutions are those special service institutions that are not public legal entities, but which are also tied to ministries through administrative tutelage.

"Affiliated" institutions, on the other hand, are independent administrative institutions that have been created in recent years especially in the form of inspection boards, such as the Competition Board established through Law number 4054 on The Protection of Competition, which is affiliated with the Customs and Trade Ministry. These institutions are public legal entities and therefore there is no hierarchical relationship between affiliated institutions and the ministries to which they are affiliated. Therefore, the only other option for the relationship between a ministry and its affiliated institution is administrative tutelage. However, no such tutelage is accorded to ministries in the laws of such institutions:

> On the contrary, the ministries to which such institutions are tied are even prevented from affecting the activities and decisions of affiliated institutions via a provision emphasizing that no body, authority, station or person may give orders or instructions influencing their final decisions and that they are independent in the fulfillment of their mandates. In this framework, it can be said that ministries that have the right of administrative tutelage over the actions and decisions of connected or related do not have this right with respect to affiliated institutions and that therefore the relationship between the ministry and the affiliated institution is different from that of hierarchy and administrative tutelage (Günday, 2011, pp. 400-401).

The HRIT, as an affiliated institution, therefore, possesses the most independent category of independence available in Turkish administrative law.

The appointment of the Board by the Council of Ministers, however, is not necessitated by administrative law. This has been a serious point of contention in almost every declaration by human rights advocacy groups. In the "Common Statement Regarding the National Human Rights Institution" dated 17/2/2010, leading human rights CSOs state the following:

> The appointment [to the Board] in the Draft Law is envisaged to be conducted by the Council of Ministers. In appointments made by the Council of Ministers, the independence of a board which is tasked with reviewing and analyzing the activities of the government will be suspect (2010, p. 3).

Once again, there are two points here that must be stressed. The first is that the authority that is to select the members of the institution is not specified in the Paris Principles. In fact, the ICC has accredited several institutions whose members are appointed by political bodies with "A" class status, such as the Equality and Human Rights Commission of Great Britain (members appointed by the relevant Minister) and the National Consultative Commission of Human Rights of France (members appointed by the Prime Minister) (Altıparmak, 2010, p. 13). The second point is that the appointment process was amended in the ratified version of the Law. The Law now states that two of the Board members will be appointed by the President, seven members will be chosen by the Council of Ministers, one will be chosen by the Higher Board of Education from among professors of law and political science, and one member will be chosen by bar presidents from among lawyers. All persons to be chosen must be selected from among those who have distinguished themselves in the field of human rights (RV: 5(4)).

Other topics of criticism with regard to the independence of the HRIT include the issue of the lack of protection in the Law for members of the Board. The suggested approach is that the security of tenure of Board members must be assured, as there is no clear objective criteria that prevents arbitrary termination, and that immunity

must be accorded in order to protect members from legal liability (Roberts and Adamson, 2011, p. 13).

With regard to the security of tenure, the only provision in the Paris Principles is Article 6 under "Composition and guarantees of independence and pluralism", which states:

> In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Strictly speaking, the only real condition put forward in the Paris Principles is that the appointment of the members be through an official act, and that the mandate must for a specific duration. In the draft version of the Law, all of these conditions were met (DV: 3(5)). Additional security of tenure provisions also existed in the Draft law, as for instance, it was stipulated in Article 3(9) that the tenure of the President, second President and the members of the Board could not be terminated for any reasons until the end of their mandate. The only exceptions for these were: if it was later determined that the members did not meet the qualification needed for their appointment; if either the President of the members do not sign Board decisions within the required time period or do not present the reasons for their counter votes; if they do not attend three consecutive Board meetings without an acceptable excuse; if they are exempt from work due to serious illness or disability; if they are sentenced due to crimes committed in relation to their duties; if their temporary incapacity to work exceeds three months; or if they are sentenced to over three months of imprisonment and they have already started serving this period (DV: 3(9) and 3(10)).

Arguing that the removal process should be in the hands of the Parliament and not the Council of Ministers as it is in the Law, Roberts and Adamson claim that the above-mentioned provisions do not provide safety against arbitrary termination (2011, p. 13). Altıparmak cites the United Nations Handbook on this matter, which

states: “Members of a national institution should enjoy immunity from civil and criminal proceedings in respect of acts performed in an official capacity” (1995, par. 81), and notes that the Draft Law, in contradiction to these international standards, allows for civil and criminal proceedings against members who have committed crimes concerning their duties: “In other words, the Board members may be prosecuted for the ideas they express in the Board” (2010, p. 24). Altıparmak provides the solution of granting immunity to Board members, and provides the example of the HRAC as an example, in that the President of the Advisory Committee İbrahim Kaboğlu and Baskın Oran were prosecuted for a report they had drafted on minority rights (2010, p. 23).

These are salient criticisms. However, they do not have their bases in the wording of the Paris Principles. Nevertheless, an important provision has been in included in the ratified version of the Law which takes an important step in solving the issues raised by critics. Article 6, entitled “security of tenure”, includes this provision in subparagraph 2:

> Aside from in-the-act instances which fall under the competence of the high criminal court, the President, Second President and members who are alleged to have committed a crime exclusively in relation to their duties of protecting and developing human rights, shall not be apprehended, subject to body or house searches, or interrogated. However, the Prime Ministry shall immediately be informed of the situation. Law enforcement supervisors or officials who violate the provisions of this sub-paragraph shall be investigated and prosecuted by the competent Public Prosecutor according to general provisions.

As can be seen, the ratified version of the Law provides the security of tenure of members of the Human Rights Board of the HRIT, with a provision that borders on granting them immunity.

Another criticism made regarding the draft version of the Law, however, is still viable for the ratified version, as the point of contention has not been changed. This is Altıparmak’s criticism of Article 3(12) of the draft version of the Law (RV: 18(2)) which states that the President and members of the board as well as the personnel of the institution shall not disclose to anyone other than those authorized

by Law information of a secret nature, personal information, secret information related to the Institution, commercial secrets and documents related to such information belonging to the *state*, relevant people and third persons, which they have obtained during the fulfillment of their tasks. Altıparmak notes that the addition of secret information belonging to the state in this provision many human rights related documents will not be disclosed to the public as the personnel of the Institution will not be willing to risk prosecution for doing so. What is more, the violation risks being brushed under the carpet should the authorized person or institution decide not to act on the information provided (Altıparmak, 2010, p. 24). This criticism is very strong. Yet once again, for devil's advocacy, one can argue that the scenarios are inevitably speculative, and as such that they are not reflected in the Paris Principles. The real effect of this provision on the functioning of the HRIT can only be seen through implementation.

Regarding the independence/autonomy principle, another oft-repeated criticism concerns the links between the existing state structures dealing with human rights and the HRIT. Roberts and Adamson argue strongly for a clean break between the two: "In particular, the Human Rights Presidency cannot be linked with the NHRI in any respect. This would seriously compromise the actual and perceived independence of the NHRI and therefore its compliance with the Paris Principles" (2011, p. 2). The clear break includes not using the staff or buildings of the Presidency, and not taking up any accumulated work of the Presidency (Roberts & Adamson, 2011, p. 7). The argument is based on doubts regarding the impartiality of the staff working for the Presidency: "The ability of the staff of such an institution to subsequently act entirely independently in their work raises concerns, at least to the extent that public perception would be engage" (Roberts & Adamson, 2011, p. 7). This argument is untenable. First of all, there is no substantive evidence to prove that Roberts and Adamson can know what the public perception is regarding the staff working for the Presidency. Also, the assumption that the staff working in the Presidency are all irreversibly pro-state (along with all the ambiguous connotations such a claim brings with it) is also not substantiated. Taking into consideration the necessity that will inescapably be felt for

experts/specialists who know the field of human rights and have worked in this area for some time, the transfer of human rights specialists who have been trained in human rights related matters throughout their tenure in the Human Rights Presidency, as well as experienced and witnessed the problems that could arise and the solutions that could be presented with regard to claims of human rights violations, it can be argued that the transfer of personnel from the HRP to the HRIT is a positive step.

The final most quoted shortcoming seen in the independence/autonomy of the HRIT has to do with its financial autonomy. The Law states that the HRIT will have administrative and financial autonomy as well as a special budget (DV: 2(1); RV 3(1)). The term "special budget" is defined in Article 12 of Law number 5018 entitled "Law on State Financial Management and Control" rather clumsily as the budget of a public institution established in connection or relation with (no mention is made of "affiliated" institutions) a ministry in order to undertake a public service, and which is allocated an income and the authority to meet their expenses from this income. Article 2(9) of the Draft Version of the Law does elaborate, however, on where the HRIT will obtain its income: aid to be made from the general budget; all types of charity and aid; income generated from the use of the income of the Institution; and other incomes.

The strongest criticism against this is that the exact amount of the contribution to be made from the General Budget is not specified, which makes it possible to restrict the budget in case the Institution becomes too critical (Altıparmak, 2010, p. 21). Article 21 of the ratified version of the Law, where the incomes of the Institution are listed, uses a slightly different wording with regard to the contribution from the general budget: "a subsidy allocated from the general budget". This change may have been made in order to place more certainty into the contribution from the general budget. In any case, however, the Paris Principles notes that the national institution must not be subject to financial control which might affects its independence. Strictly speaking, even if the contribution from the general budget

was lowered, other methods for building up its own budget seems to be open for the HRIT.

The final broad category of criticism against the HRIT is how effective it is envisaged to be. Effectiveness is not a heading under the Paris Principles *per se*, although of course it can be argued that every provision in the Principles related to independence/autonomy, as well as the methods of operation laid out in the text, is done so for the purpose of ensuring some level of effectiveness for the national institution. However, critics of the Law on HRIT focus on two specific issues: the power of the President, which is seen to be excessive, and the concern regarding the HRIT's ability to deal with the heavy workload, especially with regard to visits to detention centers and the assessment of individual complaints.

The mandate of the President in both the draft and ratified versions of the Law includes the following: to determine the agenda, day and hour of Board meetings and managing these meetings; to ensure the notification of the decisions of the Board to the public and to monitor their implementation; to assign the personnel of the institution; to present to the Board recommendations coming from the service units; to prepare the Institution's strategic plan, performance program and to determine its service quality standards; to prepare the institution's annual budget; to prepare guides aiming to eradicate practices against human rights to be distributed to public institutions and to monitor their implementation; to ensure coordination among the Board and the service units; to prepare annual activity reports and to evaluate activities according to performance criteria; to represent the HRIT; and to fulfill other duties related to the administration and operation of the Institution.

Two very significant changes have been made in the ratified version of the Law, however, concerning the appointment and mandate of the President. These amendments critically impact the power of the President, and therefore should be mentioned. The first is that while in the draft version of the Law, the President was to be appointed by the Council of Ministers (DV: 3(4)), the ratified version of the Law stipulates that the President is to be chosen from among the members of the

Board by the members of the Board (RV: 5(5)). Coupled with the changes in the appointment of Board members outlined above, this presents a different scenario for the HRIT then what was envisaged in the draft version of the Law, as the possibility arises for choosing a President that is not appointed by the Council of Ministers in the first place. The second important amendment has to do with the agenda-setting powers of the President. In the draft version of the Law, this power was given to the President alone (DV: 5(4)a). Critics rightly objected to this provision, warning that as it would not be possible for the agenda to change through the demand of one of the members of the Board, the Board would not be able to discuss issues that is not put on the agenda by the President (Altıparmak, 2010, p. 19). The ratified version of the Law, however, remedies this shortcoming by stating under subparagraph 2 of Article 8 which regulates the "Methods of operation of the Board", that a new item can be placed in the agenda of the Board following the suggestion of a member of the Board during the meeting and the acceptance of this suggestion by the Board.

Although these amendments can be seen as solid steps to alleviate concerns about the monopolization of power by the President in the HRIT, certain criticisms still linger. For instance, Roberts and Adamson comment on the President's power to appoint the institution's personnel on his own, as well as prepare human rights guidelines, and perhaps most importantly, the permission of the President required to obtain documents as part of an investigation (2011, p. 14). Altıparmak also comments on the fact that the "specialists" of the institution can only ask for documents and information from other public institutions and relevant persons and can only visit or investigate places of detention with the permission of President (2010, p. 19). The most probable explanation for the permission-granting power of the President could be that the Government does not trust civil servants to wield such power to investigate and demand information from other public institutions, fearing perhaps the abuse of this power, which would in turn impede the necessary trust and cooperation to be elicited from other Government bodies. This also applies to the preparation of human rights guidelines, which would obviously be prepared by the specialists, approved by the President and brought forward to the Board for ratification.

This leads into the second and very important issue regarding the effectiveness of the Board, namely the envisaged workload for the HRIT. Both Altıparmak (2010, p. 20) and Roberts and Adamson (2011, p. 16-17) emphasize the inadequate number of staff for the great workload that the HRIT will be faced with, especially taking into consideration the competence of the HRIT to receive individual complaints regarding violations of human rights and to investigate numerous places of detention and shelters for victims of crime. It should be noted that the draft version of the law envisaged the Institution to be made up of 60 staff members, 45 of which were "specialists" or "assistant specialists". This number was increased in the ratified version of the Law, where out of 75 total number of staff, 60 are specialists or assistant specialists. Nevertheless, such a slight increase in numbers can in no way alleviate concerns regarding the workload of the HRIT, which the failure to fulfill will undoubtedly affect the perceived effectiveness of the HRIT in the eyes of the public. However, three possible avenues exist for dealing with the situation, which is in all probability the provisions which the President of the Human Rights Presidency trusted when stating to the Peer Review Mission that the HRIT could have "up to 1000 staff through outsourcing" (Roberts and Adamson, 2011, p. 16). These include the ability to employ, through temporary contracts, people with at least ten years of occupational experience or those with doctorates in subjects related to the work of the Institution(RV: 15(4)); secondment from various public institutions in which case the institutions concern continues to pay the wages of the seconded employee (RV: 17(1)); and the ability of the HRIT to purchase services for work of temporary nature or work which requires specialization (RV: 20(2)).

Notwithstanding these avenues for employment outside the allotted space in the Law, it is unclear what the basis was to have pronounced the number 1000. More importantly, the competences of these outside cadres is also unclear. Despite all of these drawbacks, there is no way of assuredly stating that the current Law stands opposed to the Paris Principles with regard to effectiveness either.

6.3. Concerns outside the Paris Principles and solution proposed by CSOs

The main points to have been cited by the two most thorough and in-depth analyses of the HRIT Law has therefore been taken into consideration here in order to verify whether the Law really does fail to conform to the Paris Principles. It has been found that the criticisms are not accurate and that the Law, strictly speaking, does indeed conform to the Paris Principles when the latter is taken on its own, and stripped of any interpretation or elaboration to the Principles placed either by international bodies such as the ICC or by human rights advocates in Turkey. It has been argued that such interpretations of the Paris Principles that place more stringent conditions for the autonomy and effectiveness of national institutions have been shown to be in opposition to the pragmatic effort to ensure the spreading of these institutions. Any effort to change the Paris Principles from what it really is, namely a consensus text, to what human rights advocates aspire it to be, namely an instrument for the boomerang effect which, with the help of the ICC, can be used for the name and shame game, may be counterproductive in the ultimate goal for democratization.

This point can be substantiated by pointing to the "real reason" behind the opposition to the HRIT: mistrust of the Turkish state. Upon closer inspection of the meticulously prepared analyses of experts in the field of human rights institutionalization, one can find that there are very clear intimations of this mistrust.

The first of these is the insight that the Turkish state has been attempting to institutionalize human rights in order to pay lip-service to the European Union, especially in a context in which harmonization with the EU acquis is needed for the membership process to continue. One of the earliest joint opposition declarations by leading human rights advocacy groups in Turkey on 21/5/2009 stated the following:

> Much work undertaken in the field of human rights by the Government until today has been conducted without obtaining the views and

> suggestions of experts on the issue especially human rights organizations, without discussing alternative solutions, without paying due attention to international standards and principles, and completely in order to prove to the EU that progress is being made in the field of human rights albeit without leading to unnecessary problems.

Noting the instance when the Ombudsman Law was sent back to the Parliament by the President who cited a previous decision of the Constitutional Court to show that this Law would be subject to a stay of execution from the Court, and the fact that the Government accepted the Law in Parliament without any changes to it knowing that its execution would be stayed by the Constitutional Court, Altıparmak states: "It would not be an exaggeration to think that this decision, like all other decisions regarding the institutionalization of human rights, was directed solely towards satisfying the EU Commission" (2007, p. 68). Altıparmak repeats a similar version of this argument when talking of the HRIT Law, when he states that the initiative to create a national human rights institution was introduced following the European Union Council Accession Partnership in which among the short-term priorities the establishment of a national institution for human rights in line with UN standards and possessing adequate financial resources was included. Altıparmak goes on to state: "...the totality of the Draft Law justifies the argument that the national institution envisaged is one which is created in order to satisfy international organizations rather than one which is established in a post-conflict normalization period" (2010, p. 2).

The second point that is a prevalent theme in critics' arguments is that the law reflects an effort of the state to control the field of human rights advocacy and subsume outspoken CSOs. In line with Cardenas's warning that states may move, through NHRIs, to displace domestic CSOs in the field of human rights (2003, see quote above), Altıparmak states the following with regard to the situation in Turkey:

> In the end, civil society is being completely left out of the process, and the national institution is becoming a part of the Turkey-EU negotiations. In case the institution to be established is supported and accredited by the EU, the already diminishing field of struggle of civil society will be in danger

> of disappearing, as the condition for its existence will be for it to be a part of the newly created mechanisms, i.e. for it to be assimilated into the state (*devletleşmesi*)…The method of absorption of civil society, attempted during the 2000s with the weaker provincial-district boards and the Human Rights Presidency, is being revisited in a much stronger wave and in an appropriate atmosphere. If civil society does not take the last exit from the bridge it may be too late (Altıparmak, 2007, p. 37).

The solution proposed by academicians and human rights CSOs, before the Law was ratified, was simple: withdraw the Law. The Human Rights Foundation of Turkey, in their report entitled "Views and Recommendations of the Human Rights Foundation of Turkey on the Law on Human Rights Institution of Turkey", dated 9 February 2010, concludes the report in the following way:

> In short, the Government is taking all decisions regarding the establishment and duties of an institution which will have an extremely important role in the development and protection of human rights in Turkey on its own, against the Paris Principles. As we have shared before, this is an unacceptable situation for our institutions which have worked toward the building of respect to human rights and democracy in Turkey. This Draft Law, which has been prepared by evading all of us, should be immediately withdrawn (HRFD, 2010, p. 10).

A joint declaration by the major human rights institutions, including the Human Rights Association, the Helsinki Citizens Assembly, MAZLUMDER, the HRFD, and Amnesty International Turkey, echoes the demand:

> However, just as everyone observes, neither during the preparation of the law nor the content of the proposed draft presents a new viewpoint. Therefore the draft should be withdrawn and should be redrafted together with human rights and civil society organizations on the basis of the principles of pluralism, respect for diversity, non-discrimination, and participation (İHOP, 2010, p. 7).

The same demand was made by the same institutions in a joint proposal to the Parliament by İHOP on 18 April 2012, where it was stated that while they shared the necessity of establishing a national institution, an NHRI that is to be established based on the present version of the Draft Law would be "no different than the problematic and non-functional official human rights boards and institutions" and that the Draft Law should be redrafted in a "participatory process" (İHOP, 2012, p.

12). The demand has, however, fallen on deaf ears. As noted, the Law was ratified by Parliament on 21 June 2012. The CSOs in question, however, have not put forward a Plan B.

Yet much can still be done. The first step to formulating a new approach to ensuring that the HRIT works effectively, however, requires an altogether new approach to the way in which the development of institutions are viewed. This can only be achieved through a relational approach, which acknowledges contingency in the development of institutions, thereby avoiding a fatalism which may end up causing the HRIT to fulfill the prophecy of the worst case scenario. Certain relational analyses in the International Relations discipline has the potential to form the basis of such an approach. For instance, Risse and Sikkink's (1999) conceptualization regarding the diffusion of international norms in the human rights area and what they call the process of "socialization", i.e. the "process by which international norms are internalized and implemented domestically" (1999, p. 5) has the potential to present an alternative reading to the development of institutions in general, and the potential of the HRIT in particular. The social constructivist approach utilized in their article is important as a basis on which to build a relational approach, as it enables the users to allow for unintended consequences, which cannot be taken into account in a strictly reified and ahistorical (in the sense of not being susceptible to change) accounts of and expectation from institutions. Indeed, what may start off as the result of instrumental calculations for dominance in the area of human rights, which according to human rights advocates is evidenced by the fact that the Law was drafted in secrecy, may, as a result of unintended consequences, lead to an internalization of certain norms:

> In fact, the process of human rights change almost always begins with some instrumentally or strategically motivated adaptation by national governments to growing domestic and transnational pressures. But we also argue that this is rarely the end of the story. Even instrumental adoption of human rights norms, if it leads to domestic structural change such as redemocratization, sets into motion a process of identity transformation, so that norms initially adopted for instrumental reasons, are later maintained for reasons of belief and identity (Risse and Sikkink, 1999, p. 10).

The idea is neatly captured in the following sentences summarizing the same article: "Risse and Sikkink take lip-service seriously. Governments who 'talk the talk' of human rights may find it hard not to 'walk the walk' - that is, to back words with actions - for fear of being accused of hypocrisy" (Freeman, 2002, p. 135). In fact, a crucial insight from social psychology is that when individuals act a certain way for strategic reasons they find the need to justify their actions to themselves and others. To resolve the cognitive dissonance between the argument made and what is believed, "human beings have a tendency to resolve such dissonance by adapting their preferences to the behaviour; that is, they internalize the justification" (Checkel, 2005, p. 814).

The process, following a large amount of empirical research, is broken down into a five-phase "spiral model". The fundamental tenet behind Risse and Sikkink's social constructivist approach is that "a state's political identity emerges not in isolation but in relation to and in interaction with other groups of states and international non-state actors" (Risse and Sikkink, 1999, p. 11). Moreover, the spiral model does not "assume evolutionary progress. Rather…we identify those stages in the model where governments might return to repressive practices" (Risse and Sikkink, 1999, p. 18).

The first phase is that of repression and the activation of network, pointing to the initial stage where domestic opposition is weak and repression is ever-present (albeit in different levels according to context). Transnational advocacy networks work in order to gather information on state repression, and attempt to carry this information onto the international agenda. In the second phase of the model, entitled the "denial" phase, repressive states are expected to fall into denial in the sense of refusing "to accept the validity of international human rights norms themselves", opposing international jurisdiction on the subject area in question[22]. Such denial,

[22] An interesting point to note is that during the "denial" phase, it is said that the presence of an insurgent movement in the country can validate the Government's claim "that the order or the very integrity of the nation is at stake, and thus isolates domestic human rights organization and international pressures by identifying these groups as conscious or unconscious accomplices of terrorism" (Risse and Sikkink, 1999, p. 23).

however, is taken to mean that a process of international socialization is ensuing. The third phase is one in which the norm-violating state proposes "tactical concessions" in the form of "cosmetic changes to pacify international criticism". It is noted that at this stage the state may unintentionally open the door to the domestic opposition to gain courage to launch its own criticisms against its policies. Thereby, international networks are said to influence, at this stage, the creation of space for domestic groups, which use argumentation and deliberation to potentially create coalitions against the state, and can effectively shame the norm-violating governments. At this stage the snowball is becoming an avalanche, yet the government overestimates its support from the domestic population, and underestimates the impact of the cosmetic changes conceded. Another critical point at this stage is said to be the Government's acceptance of the validity of human rights norms and finding themselves trapped into used the human rights discourse themselves to fend off criticisms:

> The more norm-violating governments argue with their critics, the more likely they are to make argumentative concessions and to specify their justifications and the less likely they are to leave the arguing mode by openly denouncing their critics. At this stage then, reputational concerns keep governments in a dialogical mode of arguing (Risse and Sikkink, 1999, p. 28).

Norm-violating states are left with little choice when faced with a mobilized domestic opposition with links to the transnational networks, and either embark on a process of controlled liberalization or attempt to repress the opposition, which results in a serious backlash, potentially even leading to an ousting from power. Either way, the fourth stage is reached, namely that in which ideas gain "prescriptive status", denoting the stage in which no controversy remains regarding the validity claims of the norms, even when norms may still be violated in practice. Relevant international human rights conventions are ratified (regardless of whether as a reflection of the "true belief of actors" or not), the discursive practices of the state acknowledges the validity of the human rights norms, and the actual institutionalization of the norms into domestic law and practice begins. The last stage is that of "rule-consistent behavior" in which governments potentially enter

into a sustained changed provided that pressure from above (transnational networks) and below (domestic opposition) continues. This is the final stage of the socialization, or internalization process of human rights norms (Risse and Sikkink, 1999, pp. 22-33).

In accepting institutions as the outcome of relational processes, that is, the outcome of processes which are defined by relations within actors in the institution, outside of the institution affecting the institution, as well as between a perceived reified version of the institution with other institutions and actors, it becomes difficult not to see how change can be possible by involvement against, in and through such institutions. One important relational theory of democratization which rejects the notion that actors and institutions enter democratic processes with fixed preferences, and placing much significance on the ability of subjects to deliberate in such a reasoned way as to be able to accept if not change the ideas of one another is that of deliberative democracy. The rationale behind deliberation is said to be that consensus is reached by showing that an outcome is in the interests of all and that even when intractable issues exist, the efforts made to reach such consensus yields advantages to both sides, not least of all being able to reach consensus on other issues which prove not to be so intractable (Cunningham, 2002, p. 166). The deliberative process requires adherence to the principle of reciprocity, which in itself is a quintessentially relational principle:

> If citizens publicly appeal to reasons that are shared or could be shared, by their fellow citizens, and if they take into account these same kinds of reasons presented by similarly motivated citizens, then they are already engaged in a process that by its nature aims at a justifiable resolution of disagreement (Gutmann and Thompson, 1996, p. 25).

A strong case can be made for the deliberative potential of the PHRBs. Their greatest asset is their local character, with representatives from a diverse set of actors, including the bar, occupational organizations, representatives of political parties represented in the parliament, a high-ranking state official and CSOs to name a few. While it is true that some deliberate better than others in any context, local-level expertise in the specific areas that are represented count for important

information sharing, which is one of the first steps in ensuring healthy deliberation, which has the greatest potential to result in persuasion. The aim, however, is not persuasion per se:

> Citizens put their moral beliefs to the test of public deliberation, and strengthen their convictions or change their minds in response to the arguments presented in a politics governed by reciprocity. The aim of such a process is not necessarily to induce citizens to change their first-order moral beliefs. It is rather to encourage them to discover what aspects of those beliefs could be accepted as principles and policies by other citizens with whom they fundamentally disagree (Gutmann and Thompson, 1996, p. 93).

The problem, however, is that reciprocity requires the putting forward of reasons that must be mutually acceptable in "circumstances of equal advantage" (Gutmann and Thompson, 1996, p. 54). While the role of the DG can be seen as a mediator, the great symbolic power yielded by him/her should be downscaled so as to create a propitious environment for better deliberation.

Another reason PHRBs could be seen as advantageous platforms for deliberation is that their initial starting point, or rather the precondition for participating in the Boards, is an acceptance of the discourse of human rights. Members are expected to deliberate issues on the basis of their understanding of human rights and their supposed acceptance of the validity of human rights claims. This does not mean, however, that the substance of human rights cannot be deliberated, or even that members are completely sincere about their support for human rights. Such support, however, can be developed in a group atmosphere. In fact, while increased training in international human rights law and national provisions regarding human rights is a must for all members, the PHRBs should also be used as platforms in which the substance of human rights, that is, the philosophy behind human rights and the specific areas of social, political, cultural and economic life encompassed by human rights is deliberated.

When considering the way in which PHRBs can be utilized as platforms for deliberation, however, it is important to bear in mind what is called "the law of

group polarization", which states that "members of a deliberating group predictably move toward a more extreme point in the direction indicated by the members' predeliberation tendencies" (Sunstein, 2002, p. 81). Exposure to competing views, therefore is of great importance. While membership to the PHRBs seem to be diverse enough to guard against such an occurrence, especially with regard to pre-deliberation tendencies, it must be taken into consideration that its present structure does not allow for the rotation of its members, but only for the rotation of the DG who presides over them. While good practices will be retained, the opposite may also be true, and therefore if unremedied, such a lack of rotation may lead to the perpetuation of errors and bad practices. In other words, the members of the Boards, if not changed periodically, risk becoming like-minded enough to fail to improve in the best case, and repeatedly perpetrate errors in the worst case: "The central problem is that widespread error and social fragmentation are likely to result when like-minded people, insulated from others, move in extreme directions simply because of limited argument pools and parochial influences" (Sunstein, 2002, p. 90).

6.4. Concluding Remarks

As a result of the poor human rights record of the Turkish state in the post-1980 coup era at a time when the conflict with Kurdish insurgency was at its height and a connection was discovered between certain units of the state with gladio type organizations following the Susurluk[23] scandal, efforts of various governments to institutionalize human rights were viewed by civil society organizations with suspicion. Such suspicion seemed especially justified as a result of the state's attitude towards human rights advocacy groups and advocates, and its intolerance to criticisms regarding its human rights record in such sensitive areas as "minority

[23] In 1996, a scandal erupted in Turkey following a car accident. A police chief, a member of parliament of one of the major parties in Turkey (the True Path Party) and an ultranationalist gang leader were found to be in the same car. In the court hearings following the car accident, the links between the state and government with the fugitive gang leader killed in the crash (wanted for the murder of 7 students killed in 1978) were brought into daylight, and resulted in the resignation of certain high-ranking officials in the administration

rights", as evidenced by the dissolution of the Human Rights Advisory Board and its continued failure to operate in opposition to legal provisions which require it to.

In their efforts to compel the Turkish state to establish a veritable, effective and autonomous human rights institution, and in their criticisms of the existing efforts to institutionalize human rights, human rights advocacy groups relied on the Paris Principles as objective international standards. It is argued, however, that such reliance was excessive, blinding advocates to the fact that these were mere guiding, and therefore non-binding principles which were left purposefully vague to appeal to a greater number of states and a greater variety of regimes around the world. Moreover, the possibility that non-conforming institutional structures may indeed be more effective in the specific context of the country concerned, or that it may evolve into a more effective and autonomous entity, or the possibility that an institution in complete conformity with the Paris Principles may lead to adverse consequences such as the centralization of the institutionalization of human rights, have not been taken into consideration.

The refusal to engage with the Turkish state by certain human rights advocacy groups, or rather, a perception of the Turkish state, has had a debilitating effect on the effectiveness of the PHRB project, which had, and continues to have, great potential in being local platforms for deliberation on human rights, as well as local training grounds for human rights advocacy, not to mention actors that have shown themselves capable of producing real change and improvement in the provinces in which they were effectively operated, largely as a result of effective CSOs willing to tap into this potential. The reliance on the Paris Principles in criticizing the establishment of the HRIT has also had a debilitating effect, but this time on the credibility of the arguments of human rights advocates. For the HRIT, it has been shown above, does in fact adhere to the Paris Principles in a strictly legal sense. The reliance on the Paris Principles have led advocates to elaborate on the actual Paris Principles, as well as make certain additions in the alleged spirit of the Paris Principles to show the shortcomings of the new HRIT in this regard. In this sense, human rights advocates seem outmaneuvered by state officials who have drafted the

new Law on the establishment of the HRIT, and have created an institution which essentially takes a step back from the experiences and the untapped potential of PHRBs, by centralizing the state's role in the human rights network, allowing it to potentially exert a greater amount of selectivity with regard to the CSOs it will choose to cooperate with in the future and the issues it will take into account, and thus displacing non-state actors in the long run by controlling the human rights agenda.

Yet the HRIT should also be seen as an institution which can evolve into an effective and autonomous NHRI, just as it can regress into fulfilling the worst case scenarios painted by human rights advocates, namely operating as a legitimizing instrument of the ruling party or the human rights abuses of the "state". A critical component for the former scenario to occur, however, are the continuing operation of the PHRBs through a greater amount of legitimacy conferred on them by the increasing involvement of the most effective human rights advocacy groups in Turkey. The experiences gathered by these PHRB should be claimed, internalized and acted upon by human rights CSOs, which in turn would make the PHRBs a counter-weight to the centralizing potential of the HRIT.

CHAPTER VII
CONCLUSION

7.1. The rift between state and civil society in Turkey

The main reference point for human rights advocacy organizations and advocates in Turkey when responding to two decades of continuous efforts of the state to institutionalize human rights has been the Paris Principles, a set of non-binding guidelines accepted by states under the auspices of the United Nations General Assembly in 1993. Underneath this reliance, it has been argued, is a deep seated mistrust of the Turkish state and its reasons for trying so consistently to institutionalize a field in which it has been seen to perpetrate so many human rights violations. As has been shown in the thesis, explanations regarding the designs of the state include paying lip-service in its bid for accession to the European Union, and an effort to control human rights advocacy and subsume outspoken advocates of human rights.

When looking at examples from past efforts by the Turkish state to institutionalize human rights, research showed that these criticisms are by no means baseless. The continuous emphasis placed on the choosing of members of human rights institutions by state officials is a case in point. Thus, while human rights institutions that would operate in proximity to the state such as the Human Rights Education Ten Year National Committee were chosen by Cabinet members, decentralized institutions working under the supervision of the Governorships (the PHRBs) were chosen by state administrators (Governors and Deputy Governors). Needless to say, this makes a strong case for arguing that the state's mistrust of human rights advocates has led it to undertake concerted and concentrated efforts to either keep outspoken advocates in check or to displace them through human rights institutions comprised of "compliant" organizations or persons. It should also be remembered

that the most expansive set of reforms in the institutionalization of human rights was realized under the roof of the Prime Ministry, by adding under it a Human Rights Presidency, a High Committee for Human Rights, a Human Rights Advisory Committee and Delegations to Review Claims Regarding Human Rights Violations, all established through amendments to the Law establishing the Prime Ministry. Only the Human Rights Presidency has been mildly active since its establishment, and it has been so only through its role of supplying the PHRBs with training material (insufficiently, as the research conducted for this thesis shows). The High Committee for Human Rights was established as a gathering of high level Bureaucrats to act as a jury to choose the members of the Human Rights Advisory Committee (HRAC), while the Delegations to Review Claims Regarding Human Rights Violations were never formed. It was the crisis that was generated within the HRAC as a result of a report drafted by two of its academic members on minority rights, and the later prosecution of these members and the de facto shutting down of the activities of the HRAC, which brought to bear the criticisms of human rights advocates regarding the insincere efforts of the state and its intolerance of contrarian views under its roof.

The thesis began with asking the questions: Did the process of the institutionalization of human rights by the state substantiate the arguments that it was a calculating actor attempting to expand its capacity and sphere of power at the expense of civil society? And was the state trying to encroach upon and manipulate an area that had been claimed by civil society organizations to stop them from revealing the abuses of state power? The history of the institutionalization of human rights in Turkey showed that a plausible case could be made in answering affirmative to both questions.

The specific experiences of state officials and women's CSOs in the PHRBs provided further insights into the factors contributing to the success or failure of the relationship between the state and civil society in local platforms. The local character of the PHRBs allowed for a comparative view regarding the way in which these factors differed across regions. In addition, the fact that DGs were responsible

for choosing which CSOs would be accepted into membership enabled the research to compare the criteria used by state officials across regions.

The choice to focus on women's CSOs was made in order to reveal and compare the depth and extent of the selectivity employed by state officials. As women are subjected to multiple discriminations and experience patriarchy in different degrees and ways, it was believed that the criteria used to select women's CSOs as well as the experiences of women's CSOs would reveal a layered selectivity. In other words, the answers from state officials would shed light on state selectivity in cooperating with feminist women, as well as cooperating with feminist women whose gender identity was articulated with other identities, such as that of an ethnic minority. Preliminary research had shown that women's CSOs in Turkey were sufficiently variegated, locally organized and willing to cooperate with the state. This enabled the research to adequately compare the different ways in which the gender selectivities of the state operated, was perceived and experienced. The perceptions of women's CSOs on whether and in what way the state employed selectivity against them, and their reactions to this selectivity, would be critical in comparing differences across regions in the country.

In-depth interviews in 17 provinces with Deputy Governors presiding over the Provincial Human Rights Boards and representatives of women's CSOs who were, or aspired to be members of the PHRB, has shown criticisms against PHRBs on the basis of the Paris Principles to be correct. Chief among these were the lack of an independent budget and trained personnel leading to ineffectiveness, along with the disproportionate power of the DGs in the Board in choosing which CSOs to admit to the Boards along with the effects of their anxiety regarding the taking of decisions against the state line. A majority of DGs, often displaying their low regard for the capacity of local CSOs, noted that the most important criteria in choosing which CSOs to cooperate with was the level of activity and effectiveness of the CSO, along with whether or not the CSO in question was "politicized", the latter criterion being one more frequently pronounced by DGs presiding over PHRBs in the East. The connection between the two criteria was made apparent, however, as

active women's CSOs that held a Kurdish member base and that advocated for the acceptance of the specific situation and violations perpetrated against Kurdish women in the East were consistently denied membership to the Boards. DGs found themselves in a situation where they would actually opt for cooperating with inactive women's CSOs who were charity oriented or advocated on a single-issue, rather than accept women's CSOs with international recognition and strongly feminist agendas.

The clear appearance of such state selectivity in the East affirmed the hypothesis based on a relational rationale with which the research started, namely that where women's identities are articulated along identities and ideologies that fall counter to traditional selectivities of the state, women's CSOs claiming to champion the rights of these women would find it more difficult to access the public sphere.

The over-reliance on the Paris Principles and the mistrust of the Turkish state was also seemingly justified by two other factors. The first is the widely accepted historical narrative regarding the existence of a strong state tradition in Turkey, left to it as a legacy of the Ottoman Empire, and defined by the continuous failure of an autonomous civil society in general and an independent bourgeoisie in particular to develop, leading to a lack of a mediating force in society which, if existent, would have ensured social legitimacy to the state and would have therefore been a principle actor for democratization. The narrative is one which is based on an ontological separation of the state from civil society, abstracted in the form of center and periphery respectively. In the narrative, the divide between the state and civil society is seen as unbridgeable, as various reform efforts undertaken by the center in the Ottoman Empire and the Republic are seen to have been made for the sake of exerting more power over the periphery as much as to modernize the country and compete with its international rivals. The state's dealings with the periphery has been, according to this narrative, defined by efforts to manipulate and limit in a zero-sum game whereby any increase in power of the state, as seen during military interventions, would lead to a regress in the power of civil society, thereby leading to regression in democratization efforts. In fact, the strong state tradition

and the dichotomy narrative has increasingly been used, throughout the decades following the 1980 coup, by civil society organizations to explain the lack of democratization in Turkey. The failure of an autonomous civil society to develop - defined in this sense in the liberal-prescriptive form as a sphere autonomous from the interests of the state and the market, made up of advocacy CSOs formed on the basis of voluntary membership- is attributed to the constant manipulation of civil society forces by the state, as well as by political and ideological groupings within society. A genuine civil society only emerged, in this account, following the opening up of the Turkish economy to the world market, the collapse of the Soviet regime, and the increasing pressure placed on the state to democratize as a result of EU conditionalities tied to membership negotiations, as well as EU aid to advocacy groups in Turkey. Advocacy groups themselves turned to a general adoption of a post-political discourse, and turned to the creation of international alliances and networks.

The second factor can be seen as intertwined with the first. The advocacy groups were able to turn to the international sphere for support as the discourse of global governance and human rights began to have concrete manifestations, especially in the form of the support placed behind and the encouragement of the creation of National Human Rights Institutions throughout the world, especially through the work of United Nations agencies. This support was also based on the understanding that the state and civil society were separated fields, but also brought with it the acknowledgement that while states were the principle violators of human rights, they remained the entities best placed to protect and promote human rights in the world. NHRIs, therefore, were encouraged as actors that could hold the unique position between the state and civil society, and thus be in the ideal position to cooperate with domestic and international partners in implementing international human rights standards. While no specific form of NHRI was promoted, the principles of operation, the composition and the resources that should be available to NHRIs were delineated in a general manner in the Paris Principles. These were elaborated and more broadly interpreted in later years as the internal UN human rights institutions and the International Coordinating Committee (ICC) grew in

prominence. While the UNDP and the newly created OHCHR rallied behind the cause of spreading NHRIs throughout the world (aided by the increasing legitimacy conferred on NHRIs by the EU and other intergovernmental institutions), the ICC not only turned into an accrediting institution with a legal personality, but its accreditations were made conditions for giving speaking rights to NHRIs in international forums by the UN Commission on Human Rights.

In light of the above developments, the academic paradigm in Turkey utilized by scholars and advocates of democratization, and the actual experiences with the Turkish state's attempts to institutionalize human rights, the reliance of the Joint Platform for Human Rights on the Paris Principles in criticizing the institutionalization of human rights efforts in Turkey and the decision of the Human Rights Association to boycott the PHRBs seem plausible. The Joint Platform's reaction to the way in which the Law on the Human Rights Institution of Turkey has been drafted, as well as the content of the Law also utilizes the Paris Principles as the main reference point.

7.2. The alternative: a relational approach

Fieldwork for the research, however, required that the answers given to the thesis's research questions on whether the state in Turkey truly was a calculating actor locked in a zero-sum game with civil society trying to manipulate the field of human rights be altered. It was clearly shown in the research that CSOs putting time and effort into developing a network of trust with local state officials through participation in local deliberative platforms such as the PHRBs was able to break the prejudices which led to the construction and reproduction of the "zero-sum" mentality on both sides.

Research showed that the PHRBs continue to hold vast potential for the protection and promotion of human rights. This potential, it was seen, was identified and fortunately tapped into by some of the most unlikely actors in the human rights scene, namely Kurdish women's CSOs who face multiple discriminations. Their insistence to participate in the PHRBs, their belief in both the deliberative potential

of the PHRBs and their ability to change mindsets, have led to concrete results for those suffering from human rights violations. This insistence, rationalized by various representatives of women's CSOs, should lead to a questioning of the dominant paradigm of state-civil society relations in Turkey, and consequently to the way in which state efforts to institutionalize human rights are evaluated and perhaps most importantly, acted upon.

As previously mentioned, the research did show that a strategic-selectivity is employed against Kurdish women in the East of Turkey while women who do not share this intersectional identity in the West of the country found it easier to cooperate with the state. However, the consistent efforts of active women's CSOs in the East to become members of the PHRBs show the importance placed in cooperating with the state, and the added value such membership could bring. Human rights advocates who are operating from a particular region, or locality, with a constituency that is necessarily more specific than a nation-wide organization, seem to find the need to cooperate with the state in every possible platform a more urgent matter than CSOs with more resources and more avenues available to them for working with the state. Accepted as members of PHRBs in 12 provinces out of 23 provinces in which it is organized and in which it has applied for membership, KAMER has made it a policy to be involved in the PHRBs. Confident in its ability to change engrained patriarchal mindsets among the members of these Boards (which, by the way, it has reported doing), and continuously struggling against rejection to the Boards with excuses that have no legal bearing or plausibility, KAMER has consistently noted the importance of working with the state on account of it being the sole channel through which the organization can be taken seriously by other state institutions, as well as to be close enough to understand the inside problems and machinations which lead to human rights violations, and use its local expertise to prevent such violations from occurring. Moreover, it is able to create networks with state officials that go beyond the purview of the PHRBs, and to use the empathy and understanding created within the PHRBs to obtain aid and support outside of Board meetings. Defined as a "CSO working for the public good", the Izmir Association for the Protection of Women's Rights, an organization that

operates in a very different context with a very different member base (although internal migration of the Kurdish population to Izmir is changing this) expresses the same reasons for the necessity to work with the state, as well as a similar confidence in its ability to communicate in a productive manner with state officials (again, citing concrete examples). The said organization noted the importance of techniques of deliberation, which has worked for them very well in the context of their work with law-enforcement officials, especially with regard to gaining their trust. Such trust, it was expressed, goes a long way in fixing human rights violations at their source.

The dominant paradigm positing the ontological separation of the state and civil society, and the unbridgeable gap between what is called the "center" and "periphery", is misleading. First and foremost, to make sense of the way in which deliberation seems to work fine in the Turkish context despite the alleged "great divide", it is necessary to question the theoretical basis on which it rests, and consider the consequences of a historical narrative based on an ontological separation. The first consequence is that of reification, which is the positing of a concrete instance of what is abstract and sometimes unseen, attributing to "actors" such as the "state", "market" and "civil society" distinct and homogenous identities. With such distinct identities, these "actors" are also given particular roles or functions to fulfill. This is why reification goes hand in hand with functionalism. For instance, in the dichotomous narrative of the strong state tradition applied to understanding the alleged continuum from the Ottoman Empire to the Republic of Turkey, the Turkish state is imbued with a jealous, uncompromising, privileged and distant character, eternally bound to be pitted against the selfless and democratizing role of the "other", namely civil society. Ironically, a narrative which is based on clear cut roles for actors becomes necessarily ahistorical, as the adoption of different roles is made very difficult.

Such functionalism leads to ideal-types which in turn lead to periodizations, defined by whether and how much the essentialized actors approximate these models. Thus, ideal-types, such as the liberal-prescriptive view of civil society as a sphere of

voluntary relations autonomous from the state and the market, are used as yardsticks for the development of democratization. This is how the degree to which civil society is seen as having been autonomous from the state is seen as indicative of the degree of democratization in Turkey. Both for the general development of civil society organizations, and the specific development of women's CSOs, this is said to be the case. Direct manipulation and control by the single party regime in the first two decades of the Republic is said to have gradually given way to manipulation and control of civil society organizations by ideological and political causes.

The reification and functionalism born out of the ontological separation of the state from civil society has significant implications for the ability to understand, explain, foretell and even create "change". Such separation, however, should be seen as a choice made in understanding the complex history of state - civil society relations in Turkey. An alternative method would be relational, without necessarily foregoing the important insights of institutionalist theories. The term "relational" is understood in this thesis as meaning the idea that institutions are created in and amongst fluid relations, and are not fixed entities with fixed roles. The state, as a set of institutions, all representing different or overlapping interests, priorities, and perhaps even strategies, is at any one time and place the manifestation of the compromises made, as well as struggles waged between various politically, economically, culturally and socially defined actors and identities. The state is simultaneously itself the consequence of a relation, the site of conflicting and collaborating relations, as well as a party to other relations (such as in its legal capacity as party to international conventions, or subjection to international law). The same must be said of civil society. This is why their growth should not be viewed as being in isolation to one another, but intertwined with one another, whether in collaboration or opposition. Periodizations of the ideal-type kind mentioned earlier, for instance, have a difficult time in explaining certain issues, such as the existence of a vibrant civil society before the 1980 coup, even extending so far as the existence of a left-wing association in the Police force in the 1970s. The retort may be that these were "politicized" CSOs, in which case one must point

out that this is the exact reason given by certain DGs today in not accepting internationally supported and active feminist CSOs into the PHRBs. Moreover, the Human Rights Association, MAZLUMDER and the Foundation for Human Rights can be identified as having Kurdist, Islamist or Leftist agendas on the basis of their prioritization of human rights issues. A relational theory accepts this as natural, as actors in civil society, just as actors in the state, are born out of their relations to other structures and agents in their specific contexts.

A relational approach, however, need not forego the idea that structural inequality exists in the world. On the contrary, a relational approach is better placed to understand the exact nature of this inequality, as it allows for failures of "functions" attributed to actors, unintended consequences, complexities and contingencies. Structures are seen as the current results of the compromise or conflict reached between agents in society. As such, structures do not form neutral or level playing fields. Rather, they should be seen as providing facilitating conditions for certain strategies, while limiting conditions for others. The possibility of change, therefore, is not necessarily blocked. Actors are said to behave in structural conditions that have been created by past compromises or conflicts, in which their actions and strategies are limited or facilitated according to where they stand on the "hill" so to speak. Kurdish women, on account of being both women and of Kurdish ethnicity, can be said to be standing at the slopes of the structural hill. Their current struggle to ensure the protection and promotion of women's rights in line with local needs, is an uphill one. Certain variables have been noted, however, that has made the climb easier. One such variable, again only understandable with a relational approach which can take into account the importance of agents, i.e. individuals within institutions, is that of the character and perspective of the specific DG presiding over the Boards. Even certain DGs have remarked on the importance of this factor, not only with regard to the DGs, of course, but also regarding Governors.

The adoption of a relational approach, however, is made more difficult in the face of a growing global governance discourse, which has recently been pushing a human rights agenda throughout the world by the medium of international, regional

and intergovernmental organizations. While welcome in many respects, especially with regard to the proliferation of the human rights discourse, institutional engineering efforts based on international standards should be lenient enough to make room for the contingencies existing in each society. This, it has been argued, is under threat, as UN agencies and other international bodies are increasingly trying to promote a specific type or model of institution for the national human rights institution. It is important not to lose sight of the fact that the Paris Principles are non-binding guidelines that have been purposefully drafted in general and broad terms. And this is the way it should be, as an exact definition of an NHRI still proves elusive, even for the UN. Moreover, empirical studies (ICHRP, 2000) suggest that some of the most effective NHRIs do not strictly comply with the Paris Principles, as they are designed according to the specific necessities of the political, social, economic or cultural environment concerned. Taking into consideration the vast amount of responsibility and power given to Governors in the provinces in Turkey, the fact that PHRBs are presided over by DGs who are delegated powers by the Governor may actually be seen as beneficial to the effective functioning of PHRBs.

7.3. The proposed way forward

Unfortunately, due to the over-reliance on the Paris Principles, human rights advocacy groups have been outmaneuvered by the AKP Government. In strict legal terms, it is not really possible to argue that the Law on the Establishment of the Human Rights Institution of Turkey (HRIT) defies the Paris Principles. In fact, as it stands today, and in light of the institutions that have already received ICC accreditation, the HRIT may be similarly accredited with an "A" status. This has left human rights advocates in a position where they have been driven to argue their points on the basis of the spirit of the Paris Principles, and examples of state action in the past. As a result of their anger at not having been consulted while the Law was being drafted (although they did take place in the deliberative stage of the Law in Parliamentary Commissions), and their distrust of the Turkish state, human rights advocates have called for the withdrawal of the Law. Following ratification, the

path they will take remains to be seen. In the end, however, the state has been left in a propitious situation whereby it can restrict deliberation with CSOs, and strengthen its power of selectivity through the centralization of the institutionalization of human rights, as realized with the creation of the HRIT. While local environments and platforms such as the PHRBs presented opportunities for overcoming these selectivities, especially through an easier process of creating trust, human rights advocates will be much harder pressed to influence important decisions relating to human rights.

A few steps can be taken to remedy the situation, however. Firstly, rather than ignore an institutionalization of human rights that still has the potential of respecting the diverse forms of human rights advocacy in diverse contexts throughout Turkey and has amassed a wealth of experience regarding the handling of individual complaints across the country, a reform of the PHRBs and the way in which they can be operated in parallel with the HRIT should be considered. It is important to bear in mind that the situation of the PHRBs remain uncertain. Law numbered 6332 and dated 21/06/2012 on "Human Rights Institution of Turkey" has two specific references to the Provincial and District Human Rights Boards. Stipulating the tasks of the Unit Against Torture and Ill Treatment, Article 11(2) of the Law states that the Unit will take into consideration the reports prepared by Provincial and District Human Rights Boards on their visits to places where people are deprived of their liberty or placed for the purpose of protection. This essentially means that the PHRBs are given a basis for continuing their supervisory activities, itself a very important task in the protection and promotion of human rights, especially taking into consideration the fact that most of the DGs and CSO representatives interviewed for the research noted the large number of complaints from detention facilities.

The only other mention made regarding the PHRBs in the Law numbered 6332 is under Provisional Article 1 (7), wherein it is stated that the PHRBs shall work as the bureaus of the HRIT until the bureaus of the HRIT are established. The establishment of these "Bureaus", however, is not certain, as the only Article in the

Law mentioning them, Article 11(5), notes that the Council of Ministers is authorized, upon request of the Institution, to establish or terminate the Bureaus, and that the procedures and principles regarding the duties and other issues related to the Bureau shall be determined by the Board. While it would not be useful to speculate on when and to what extent Bureaus will be established, and whether or not PHRBs will be disbanded following the establishment of such Bureaus, a window of opportunity exists to make use of the experiences of the PHRBs, as well as to build new experiences and networks with the HRIT in order to show the necessity for local level participation and expertise in the protection and promotion of human rights. The opportunity could also serve to realize the reforms necessary to the PHRBs, in the process of tying them to the working of the HRIT. For instance, HRITs may finance, out of its own budget, projects proposed by PHRBs. Training on a range of human rights issues can be given to the PHRBs. Rotation of PHRB members could be ensured, while DGs may be given more of a guiding and mediating role. PHRBs can also continue receiving individual complaints, and the HRIT Board may act as an administrative appeal body for contentious issues.

PHRBs can also serve as local training hubs for human rights, as well as a platform for students of deliberative democracy in their own right. In short, a possibility still exists for a veritable culture of human rights with arteries throughout the country to be established.

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APPENDICES

APPENDIX A: MEMBERSHIP INFORMATION ON PHRBs

Province	Activity Report	Presence of Women's CSO	Involvement in Past Projects
Mediterranean Region			
Adana	✓	×	
Antalya	✓	✓ (Türk Üniversiteli Kadınlar Der.)	✓ (İlk Adım 1)
Burdur	-	- (JİHİDEM)	-
Hatay	×	✓(Türk Kadınlar Birliği)	
Isparta	✓	×	
K.Maraş	×	✓ (Türk Kadınlar Birliği)	
Mersin	×	✓ (Soroptimist Kulübü)	✓ (İlk Adım 2)
Osmaniye	-	-	-
Eastern Anatolian Region			
Ağrı	-	-	-
Ardahan	-	-	-
Bingöl	-	-	-
Bitlis	×	?	
Elazığ	-	-	-
Erzincan	-	-	-
Erzurum	✓	✓ (Türk Kadınlar Birliği)	✓(İlk Adım 1)
Hakkari	-	-	-
Iğdır	×	✓(Türk Kadınlar Birliği ve Türk Anneler Derneği)	
Kars	✓	×	✓(BMOP)
Malatya	×	?	✓(İlk Adım 2, DIHE)
Muş	✓	✓ (KAMER)	
Tunceli	×	?	
Van	-	-	✓(BMOP,DIHE)
Aegean Region			
Aydın	-	-	-
Denizli	✓	✓(Türk Kadınlar Birliği)	✓(İlk Adım 1)

Province	Activity Report	Presence of Women's CSO	Involvement in Past Projects
İzmir	✓	✓ (Kadın Hakları Koruma Derneği, 3 gönüllü İH savunucusu)	✓(İlk Adım 2)
Kütahya	✓	✓(Türk Kadınlar Kültür Der.)	
Manisa	×	✓(Türk Kadınlar Kültür Der.)	
Muğla	-	- (JİHİDEM)	-
Uşak	×	×	
Afyon	×	?	
Southeastern Anatolian Region			
Adıyaman	×	?	
Batman	-	-	-
Diyarbakır	×	?	
G.antep	×	?	✓(İlk Adım 1)
Kilis	-	-	-
Mardin	✓	✓ (Türkiye Kadınlar Birliği)	
Siirt	×	?	
Ş.urfa	×	?	✓(BMOP)
Şırnak	-	-	
Inner Anatolian Region			
Aksaray	✓	✓ (Anneler Der.)	
Ankara	×	×	✓
Çankırı	×	?	
Eskişehir	Virüslü		
Karaman	-	-	-
Kayseri	×	✓(Türk Kadınlar Birliği)	
Kırıkkale	✓	?	
Kırşehir	Virüslü		
Konya	×	?	
Nevşehir	×	✓(Türk Kadınlar Birliği)	✓(BMOP)
Niğde	×	×	
Sivas	✓	×	
Yozgat	-	-	-
Black Sea Region			
Amasya	×	×	
Artvin	✓	×	
Bartın	-	-	-
Bayburt	-	-	-
Bolu	✓	×	
Çorum	✓	×	
Düzce	×	?	

Province	Activity Report	Presence of Women's CSO	Involvement in Past Projects
Giresun	✓ (Ama halka açık)	×	
Gümüşhane	×	✓(Kadınlar Birliği)	
Karabük	-	-	-
Kastamonu	✓	✓(Üniversiteli Kad. Der.)	
Ordu	-	-	-
Rize	×	×	
Samsun	×	×	✓(İlk Adım 1)
Sinop	✓	×	
Tokat	×	×	
Trabzon	✓	✓(Türk Anneler Der.)	✓(BMOP, DIHE)
Zonguldak	✓	×	
Marmara Region			
Balıkesir	×	?	
Bilecik	-	-	-
Bursa	-	-	-
Çanakkale	✓	✓(Türk Kadınlar Birliği Ç.Kale Kadın El Emeği Değerlendirme Der.)	
Edirne	✓	×	
İstanbul	✓	×	✓(DIHE)
Kırklareli	×	✓(Anneler Der.)	
Kocaeli	×	✓(KADAV-Kadınlarla Dayanışma Vakfı)	✓(İlk Adım 1)
Sakarya	-	-	-
Tekirdağ	✓	×	
Yalova	-	-	-

APPENDIX B: QUESTIONS POSED IN INTERVIEWS

Questions posed to Deputy Governors heading the Boards:

On the efficiency of PHRBs and recommendations:

- Do you believe PHRBs function efficiently?
    - Do you think the application mechanism to the PHRBs functions efficiently? If not why and what should be done to make it more efficient?
    - Are you satisfied with the level of knowledge about the Board among the public?
    - What kind of allegations of human rights violations do you receive?
    - Is the Board able to effectively respond to allegations of human rights violations?
    - Do you believe that the budget of the PHRB is sufficient for the Board to function efficiently?
    - What should be done to make the Boards function more efficiently? What are your recommendations?
- How would the work of the Board be affected if the Boards could select its own president? Can the members convene without the aid of the Governorship secretariat?
- Do you believe that the work of the Board would be affected positively if members were given an attendance fee? Immunity? Provisions regarding the termination or renewal of membership?
- Do you find the material prepared by the Human Rights Presidency for the training of Board members sufficient? How experienced or trained are members regarding human rights monitoring?
- How is the work of the Board affected by the fact that there is not a hierarchical relationship between the Human Rights Presidency and the Boards?

- How do you assess the endeavors to establish an National Human Rights Institution? What kind of advantages or disadvantages would such an Institution have in comparison with PHRBs? Specifically, do you believe that it is necessary for state officials (civil administrator) to be presidents of the Boards?

<u>On cooperation with CSOs:</u>

- How are CSOs chosen as members to the Board?
- When applications of CSOs for membership to the Board is evaluated, which criteria do you use? Are there any applications that are rejected? If so, what were the reasons for refusal to membership?
- Are there examples of successful cooperation with CSOs? What do you think decides whether or not cooperation is successful?

<u>Questions posed to representatives of CSOs:</u>

- How would you describe the approach of your CSO to women's human rights, and the membership profile of your organization?

- Do you have experiences of cooperation with international organizations and other local and national women's rights organizations?

- Do you collaborate with state officials in the provinces you work? For how many years? At what level? If such cooperation does not exist - do you think such collaboration would be useful?

- Do you find it necessary to collaborate with PHRBs? If yes why?

    - Have you ever applied for or been invited to membership to your local PHRB? Have you ever been refused membership? If so, what do you think were the reasons for refusal?

- Do you believe there are issues that could cause problems in working with PHRBs?

- How do you think cooperation with state officials could be developed in order to increase the protection of women's human rights? What do you think are the greatest obstacles in front of this cooperation?

- How do you assess the endeavors to establish an National Human Rights Institution? What kind of advantages or disadvantages would such an Institution have in comparison with PHRBs? Specifically, do you believe that it is necessary for state officials (civil administrator) to be presidents of the Boards?

APPENDIX C: COMPARISON OF NATIONAL HUMAN RIGHTS MODELS

TYPE OR MODEL	CHARACTERISTICS	POTENTIAL STRENGTHS	POTENTIAL CHALLENGES
1. HUMAN RIGHTS COMMISSIONS	Concentrated in Africa, Asia- Pacific and Commonwealth countries with common law traditions. Plurality of members who may be full or part-time. Members make decisions. Usually focus on investigations, and often can receive individual complaints. Relatively large professional staff. Some have authority to make or seek enforceable orders through tribunals or courts.	Plurality enhances credibility. Advisory function strengthened by investigation mandate. For commissions with power to enforce orders, can effect change directly and provide remedy to victims either themselves or through the courts. Allows complainants free access to court/specialised tribunal, with legal representation.	Need to address individual case load may lead to less time to devote to other programme areas. Can be costly to operate, especially if the commission provides free legal services to clients before the courts or specialised tribunal. Investigation processes may become rigid and lengthy given that decisions may be brought to court or specialised tribunal. Backlogs of cases are common. Quasi-jurisdictional commissions in countries with a weak judiciary may have difficulty enforcing their orders.
2. HUMAN RIGHTS OMBUDSMAN OFFICES	Found in Scandinavian countries and the CIS. Single member head usually makes key decision. More informal and resolution focused approaches. Findings are usually recommendatory. Relatively large professional staff.	Where ombudsman tradition is strong, can be e!ective. Single head can lead to operational efficiency. More flexibility and less onerous investigatory processes. Advice-giving function strengthened by investigation mandate.	Findings can be ignored Institution may be seen as being about “one person” and may lack the structural depth of a commission in terms of leadership and staffing. Because the ombudsman or commissioner is the head of the organisation, reputation is especially important. This tends to “personalise” the office and can lead to greater difficulties in countries that have not yet developed a culture of respect for the office. Need to address individual case load may lead to less time to devote to other programme areas.

TYPE OR MODEL	CHARACTERISTICS	POTENTIAL STRENGTHS	POTENTIAL CHALLENGES
HYBRID HUMAN RIGHTS INSTITUTIONS	Found mainly in Latin America and the emerging democracies of Europe although examples exist in Africa and Asia-Pacific as well. Share characteristics of human rights ombudsman offices. Mandate is to protect and promote human rights and deal with malfeasance and/or corruption, and may extend to other issues.	Shares advantages of human rights ombudsman offices. Allows one-stop service to clients. Ensures that issues are dealt with without requiring referral to other agencies. Brings cost efficiencies and minimises conflicts with other institutions.	Breadth of mandate may make it unmanageable and may short-change one or more aspects of the mandate. Risk that resource levels will not match broad responsibilities. Linking human rights to other issues may lead to diminished respect for the fundamental nature of human rights.
CONSULTATIVE/ ADVISORY HUMAN RIGHTS RESEARCH INSTITUTIONS	Found in Europe, Africa, the Middle East and in some countries that share a Francophone tradition. Plurality of members assured by incorporating representatives from all social forces as members. Focus on advice-giving and research. Usually do not investigate individual complaints.	Plurality enhances credibility. Absence of individual complaint mechanism means attention can be paid to policy-level and major issues that are of national significance.	Risk that debates will remain at the academic level and not promote change in practice. Decision-making may be difficult given size and diversity of decision-makers. Costs of maintaining large number of commissioners may be prohibitive. Absence of complaint-taking function weakens protection mandate.

Source: UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, 2010: 29-30.

APPENDIX D: CURRICULUM VITAE

PERSONAL INFORMATION

Surname, Name: ARINER, Hakkı Onur
Nationality: Turkish (TC)
Date and Place of Birth: 3 June 1981 , Ankara
Marital Status: Married
Phone: +90 312 426 64 96
email: ariner@hotmail.com

EDUCATION

Degree	Institution	Year of Graduation
Ph.D.	METU Political Science and Public Administration	2013
MSc	METU International Relations	2006
BSc	METU International Relations	2003
High School	International School of Berne	1999

WORK EXPERIENCE

Year	Place	Enrollment
May 2013- Present	Swedish Embassy in Ankara	National Programme Officer
Oct 2012- May 2013	British Embassy in Ankara	Consultant to the Asylum and Migration Bureau of the Ministry of Interior of Turkey
Jan 2011 - Oct 2012	International Organization for Migration	Consultant to the Asylum and Migration Bureau of the Ministry of Interior of Turkey
Sept 2010 - Jan 2011	UNHCR	Legal Assistant
Oct 2009 - July 2010	International Organization for Migration	Consultant to the Asylum and Migration Bureau of the Ministry of Interior of Turkey

FOREIGN LANGUAGES

Advanced English, Intermediate French

PUBLICATIONS

1. Acar, F. and Arıner, H.O. 2009. *Women's Human Rights and Gender Equality*, The Ministry of Interior Publications, No: 658.

2. Canpolat, H. and Arıner, H.O. 2012. *Global Migration and the Development of Migration Policies of Turkey and the European Union*, Center for Middle Eastern Strategic Studies, Report No:123/22.

CONFERENCES AND WORKSHOPS

1. London School of Economics, "Programme on Contemporary Turkish Studies, Doctoral Dissertation Conference on Turkey", 6 May, 2011: Presentation of PhD thesis entitled "Understanding state-civil society cooperation in Turkey through the process of the institutionalization of human rights; a relational approach to the case of Provincial and District Human Rights Boards"

2. Regent's College "Turkish Migration in Europe: Projecting the Next 50 Years", 7-9 December 2012: Presentation of Paper entitled: "Acculturation with international standards in Turkey's migration reform: The Law on Foreigners and International Protection".

3. Istanbul Workshop of Foresight Project on "Migration and Global Environmental Change: Future Challenges and Opportunities", Istanbul Boğaziçi University, February 2011.

4. IOM Istanbul Conference "Current Developments in the Field of Migration and Asylum in Turkey", 5, May 2011, Panelist.

AWARDS

1. German Marshall Fund of the United States Transatlantic Forum on Migration and Integration 2010 Fellow, 2012 Fellow

2. "Scientific Research Project" funding for thesis research from METU

HOBBIES

Sports, Music, Literature.

APPENDIX E: TURKISH SUMMARY

Türkiye'de devletin son yirmi yıldır insan haklarını kurumsallaştırma çabalarına karşılık insan hakları örgütleri ve savunucularının temel referans noktası Paris Prensipleri olmuştur. Paris Prensipleri Birleşmiş Milletler Genel Kurulunda 1993 yılında kabul edilen, herhangi bir bağlayıcılığı bulunmadığı halde ulusal insan hakları kurumlarının dünyadaki hızlı artışına paralel bir şekilde başta Birleşmiş Milletler kurumları olmak üzere hükümetlerarası ve uluslararası kuruluşların devletleri ulusal insan hakları kurumları kurma çabalarında yönlendirdiği, söz konusu kurumların bağımsızlığı, etkinliği ve etkililiğiyle ilgili bir dizi standart içeren belgedir. Türkiye'de insan hakları savucularının Paris Prensiplerine olan itimadının arkasında Türkiye devletine ve devletin çok sayıda ihlalin ana sorumlusu olarak görüldüğü insan hakları alanında kurumsallaşma çabalarına duyulan büyük güvensizlik yatmaktadır. Devletin insan hakları alanında kurumsallaşma çabaları samimi bulunmamakta, aksine Avrupa Birliği sürecinde göstermelik adımlar veya insan hakları alanını kontrol altına alma çabaları olarak yorumlanmaktadır.

Tez için yürütülen araştırmalar bu eleştirilerin niteliksiz olmadığını göstermiştir. 1990'lardan bu yana devletin insan haklarını kurumsallaştırma adına attığı adımlarda kurulan kurumlarda çalışacak üyelerin Bakanlar Kurulu veya devlet yetkilileri tarafından seçilmesi bu açıdan açıklayıcıdır. Örneğin Başbakanlık bünyesinde kurulan İnsan Hakları Üst Kurulu, Başbakanın görevlendireceği bir Devlet Bakanının başkanlığında ilgili Bakanlıkların müsteşarlarından kurulmuş olup, İnsan Hakları Eğitimi On Yılı Ulusal Komitesi ve İnsan Hakları Danışma Kurulu gibi insan haklarında önemli işlevler üstlenmiş kurulların üyelerini seçmekle görevlendirilmiştir. Aynı şekilde İl ve İlçe İnsan Hakları Kurulları (İİHK) üyelerinin çoğu ve en önemlisi kurulda yer alacak sivil toplum kuruluşları (STK'lar) söz konusu ilin valisi veya valinin görevlendireceği bir vali yardımcısı tarafından seçilmektedir. Bu gibi örneklere bakıldığında devletin insan hakları alanını kontrol altına almaya ve insan hakları savunucularını yerinden etmeye

yönelik bir çaba harcadığının düşünülmesi doğaldır. Özellikle İİHK'larda devletin kendi insan hakları söyleminden önemli ölçüde dışarı çıkmayan STK'larla çalışmayı yeğlediği görülmektedir. Devletin "kırmızı çizgileri" arasında gösterebilinecek bir konuya değinmeye çalışıldığı az sayıda örnekte (örneğin İnsan Hakları Danışma Kurulu Azınlık Hakları ve Kültürel Haklar Çalışma Grubu Raporu) ise böyle bir işe kalkışan kurulun dağıtıldığı ve üyelerine dava açıldığı görülmüştür.

Paris Prensiplerine olan aşırı itimat ve Türkiye'de devlete karşı duyulan güvensizliğin temelinde iki unsurdan daha bahsetmek mümkündür. Bunlardan ilki Osmanlı İmparatorluğu'ndan Türkiye Cumhuriyeti'ne miras kalan güçlü devlet geleneğinden bahseden ve gerek akademide gerekse insan hakları savunucuları çevrelerinde geniş kabul gören tarihsel anlatımdır. Anlatımda bu devlet geleneğinin sürekli olarak bağımsız bir sivil toplum ve burjuvazi sınıfının oluşmasını engellediği, dolayısıyla devletin toplumsal meşruiyetini sağlayacak, demokratikleşmenin öncüsü olacak uzlaştırıcı bir gücün Türkiye tarihinde varlığından bahsetmenin mümkün olmadığı belirtilmektedir. Ontolojik olarak devlet ve sivil toplumu birbirinden ayıran bu anlatım, merkez-çevre soyutlamasına dayanmaktadır. Anlatımda devlet – sivil toplum arasındaki ayrımın aşılması mümkün değildir. Osmanlı İmparatorluğu ve Türkiye Cumhuriyeti'nde merkezden gelen tüm reformların ülkenin modernizasyonu ve uluslararası alanda diğer devletlerle iktisadi ve askeri rekabet gücünü artırmanın yanı sıra içeride merkezin çevreye karşı üstünlüğünü muhafaza etmek için yapıldığı belirtilmektedir. Bu anlatımda merkezin çevreyle ilişkisi devletin sivil toplumu manipüle etme ve sıfır toplamlı güç mücadelesi altında sınırlama çabalarına indirgenmiştir. Güçlü devlet geleneği savı ve buna bağlı olarak devlet - sivil toplum karşıtlığı üzerine kurulan bu anlatım 1980 askeri darbesi sonrasında STK'lar tarafından Türkiye'de demokratikleşme sürecini ve demokrasi eksikliğini anlamlandırmak için artan bir şekilde kullanılmıştır. Türkiye'de liberal-demokratik anlamda devlet ve sermaye çıkarlarından bağımsız, hak savunuculuğu yapan ve gönüllülük esasına göre örgütlenen STK'lardan müteşekkil bir sivil toplumun oluşamamasının nedeni olarak devletin ve toplumdaki siyasi ve ideolojik grupların sivil toplumu manipüle etme ve

araçsallaştırma çabaları gösterilmektedir. Gerçek manada bir sivil toplumun ancak Türkiye ekonomisinin dünya ekonomisine entegrasyonu, Sovyetler Birliğinin dağılması, Avrupa Birliği (AB) üyelik şartlarının yerine getirilmesi gereği ve AB'nin Türkiye'deki STK'lara desteği sonrası oluştuğu konusunda konuyla ilgili Türkiye'deki akademik külliyatta büyük oranda fikir birliği bulunmaktadır. Sonuçta hak savunucu grupların post-siyasal bir söylemi benimsedikler, uluslararası alanda ittifaklar ve ağlar kurdukları belirtilmektedir.

Türkiye'de insan hakları savunucularının devletle aralarındaki mesafeyi artırmalarının arkasında yatan ikinci unsur küresel yönetişim ve insan hakları söyleminde uluslararası alanda yaşanan gelişmeler ve buna bağlı olarak dünya çapında özellikle BM'nin çabaları sonucu ulusal insan hakları kurumlarının (UİHK) kurulmasına verilen destektir. Belirtilmelidir ki bu destek de devlet - sivil toplum karşıtlığını sorgulamadan kabul etmiş, ancak devletlerin insan haklarını ihlal eden başlıca kurumlar olmalarının yanı sıra aynı zamanda dünyada insan haklarını koruyup geliştirebilecek temel aktörler olduğu gerçeğini teslim etmiştir. UİHK'ların oluşumu, devlet ve sivil toplum arasında özel bir konuma sahip ve bu konumundan ötürü uluslararası insan hakları standartlarının yaşama geçirilmesi hususunda iç ve dış ortaklarla işbirliği yapmak için ideal pozisyona sahip olması saikıyla teşvik edilmiştir. Her ne kadar spesifik bir UİHK modeli teşvik edilmemiş olsa da, UİHK'lara tahsis edilmesi gereken kaynaklar ve bu kurumların yapısı ve işleyiş tarzı genel hatlarıyla Paris Prensiplerinde çizilmiştir. BM insan hakları kurumları ve Paris Prensiplerinin uygulanmasının denetlenmesi için 1993 yılında UİHK'ların Paris'ten sonra Tunus'ta düzenledikleri ikinci zirvede kurulan Uluslararası Koordinasyon Komitesi (UKK) gün geçtikçe bu standartları geliştirmiş ve daha geniş bir şekilde yorumlamıştır. Bir yandan BM Kalkınma Programı ve BM İnsan Hakları Yüksek Komiserliği dünyada UİHK'ların dünyada yayılmaları için büyük çaba sarf ederken, diğer yandan UKK tüzel kişiliği bulunan bir akreditasyon kurumuna dönüşmüştür. Böylece UKK tarafından akredite olunan UİHK'lar, BM İnsan Hakları Komisyonundan uluslararası forumlarda konuşma hakkı alabilecektir.

Yukarıda kısaca özetlenen gelişmelere, Türkiye'de devlet-sivil toplum ilişkileriyle ilgili hakim paradigmaya ve Türkiye'nin insan hakları alanında kurumsallaşma çabalarına bakıldığında, insan hakları savucuları ve örgütlerinin Türkiye'nin bu çabalarını eleştirmek için Paris Prensiplerine bel bağlamaları anlaşılır görünmektedir. Keza Türkiye İnsan Hakları Kurumu Kanununun konuyla ilgili STK'ların fikri alınmadan yazılması ve Kanunun içeriği de Paris Prensipleri temelinde insan hakları örgütleri ve savunucuları tarafından eleştirilmiştir.

Devlet - sivil toplum karşıtlığının bu denli net görüldüğü insan haklarının kurumsallaşması tartışmalarından hareketle tez araştırmasına yön veren sorular şu şekilde ifade edilebilir: Devletin insan hakları alanındaki kurumsallaşma süreci, devletin sürekli kendi alanını sivil toplumun karşısında genişletmek için düşünen ve hesap yapan bir aktör olduğunu kanıtlamakta mıdır? Devlet gerçekten de STK'ları susturmak veya kendisine karşı konumlanabilecek bu kuruluşları ve bu alanı manipüle etmek mi istemiştir?

Bu sorulara öncelikle devlet kuramlarıyla ilgili literatür taranarak teorik düzlemde bir cevap aranmıştır. Şaşırtıcı bir şekilde ontolojik olarak temelci olan devlet kuramlarının, post-yapısalcılığın etkisiyle giderek birbirilerine epistemolojik olarak eleştirel-gerçekçilik çizgisinde yakınlaştıkları ortaya çıkmıştır. Marksist, feminist ve yeni kurumsalcı kuramlar post-yapısalcılığın durumsallık vurgusunu ve öznelerin fikirlerinin yapı üzerindeki inşacı gücünü devletin somut varlığını inkar etmeye gerek duymadan kabul edebilmiştir. Zira eleştirel gerçekçilik yapıların bizim onları yorumlamamızdan bağımsız olarak var olduklarını (ontolojik temelcilik), ancak bu yapıların siyasi eylemlerimizi belirlemek yerine kimi öznelere kolaylaştırıcı, kimi öznelere zorlaştırıcı bir hareket alanı sunduğunu kabul eder. Ayrıca hem "gerçeklik" hem de bu gerçekliğin söylemsel inşasını bilmek mümkündür. Böylece yapı - özne, somut olan - fikir olan ikililiklerinde herhangi bir tarafa öncelik tanınmamıştır. Ancak bu durum devlet - sivil toplum ayrımını da anlamsızlaştırmakta, ilişkisel bir yaklaşımı gerekli kılmaktadır.

Bu özelliklerinden ötürü ilişkisel yaklaşım siyasi kurum ve aktörlerin özselleştirilmesine karşıdır. Bir başka ifadeyle ilişkisellik, siyasi alanda hareket

eden yapıların ve öznelerin ve bunların güçlerinin/kapasitelerinin bu yapılara veya öznelere özgü olduğu varsayılan özelliklerle tanımlanmamasıdır. İlişkisellik herhangi bir yapıyı veya özneyi zaman ve mekanın ötesinde tanımlamamayı, dolayısıyla genelleştirmemeyi gerektirir. Aksine, bu yapıları ve özneleri bulundukları çevreye veya bağlama göre ele almanın gerekliliğini savunur. Bu nedenle kurumlar veya özneler verili bir zaman veya mekanda süregelen spesifik ilişkilerin tezahürüdür. Bu açıdan bakıldığında devlet denilen kurum veya kurumlar bütünü tarihin tüm zaman ve mekan dilimlerinde kendine has özellikleri olan bir kurum değil, öznelerin belirli bir sosyo-ekonomik ortam, üretim ilişkileri, yerel, ulusal, bölgesel ve küresel dinamikler çerçevesinde geçmişte ve günümüzde süregelen ilişkilerinin çıktısıdır. Dolayısıyla devlet, farklı grupların, sınıfların, toplumsal cinsiyet kimliklerin, vs. mücadelesi, birleşimi veya müzakerelerinin oluşturduğu karmaşık ilişkisel süreçlerin yansıması olarak ele alınmalıdır.

Bu yaklaşımın işlevsel ve özsel yaklaşımlara göre iki önemli avantajı bulunmaktadır. İşlevselcilik, bir şeyin özelliklerini yerine getirdiği işlevlerle açıklama çabası olarak tanımlanabilir. Ancak devletin her zaman yerine getirmesi beklenen işlevleri yerine getirip getiremediği sorusunu sorunca işlevselci yaklaşım problem yaşamaktadır. Diğer bir deyişle devlet, işlevselci teoriler tarafından (ortodoks Marksizm, radikal feminizm) kendisine atfedilen işlevleri yerine getirememe olasılığını izah edememektedir. İşlevselci yaklaşımların bir başka eksikliği, devlet içinde yer alan farklı kurumlar tarafından yürütülen stratejilerin "kasıtsız sonuçlarını" (unintended consequences) açıklayamamasıdır. Bunun nedeni başarılı işlevlerin kasıtlı sonuçları ima etmesidir. Ancak yürütülen stratejilerin "kasıtsız sonuçları" belli bir zamanda incelenen belli bir devletin belli bir şekliyle açıklanmalıdır. Bu değişkenler nedeniyledir ki sermayeye hizmet eden siyasal sonuçlar hakkında herhangi bir garanti verilemez (Jessop, 2008, p. 59). İlişkisel yaklaşım kurumları ve özneleri bulundukları koşulların içerisinde kurdukları ilişkiler üzerinden tanımladığından durumsallıkları (beklenmedik veya istenmeyen sonuçları) anlamlandırma potansiyeline sahiptir.

Diğer taraftan özcülük (*essentialism*) devleti kendine özgü karakteristikleriyle tanımlar. Dolayısıyla devlet, kendisine özgü adanmış bir personelin bulunduğu (bürokrasi) ve zor kullanımında meşru bir tekeli olan bir olgu olarak tanımlanır. Klasik kurumsalcı ve yeni kurumsalcı düşünürler devletin toplumdaki diğer aktörlerden bağımsızlığını vurgular. Kurumsalcı anlayışa göre devlet kendi başına buyruk bir aktördür. Ancak özcü teoriler işlevselci teorilerle benzer bir sorunla karşılaşmakta, devletin oluşumu ve işleyişinin devlet dışında ve hatta devlete yönelik olmayan ilişkilerin yansıması olduğu ihtimalini göz önüne alamamaktadır. Dolayısıyla devletin elinde olmayan veya kapasitesinin yetmediği durumlarda oluşan durumsallıkların yarattığı siyasi, sosyal ve ekonomik değişimlerin devlet veya devlet - sivil toplum üzerindeki etkilerinin anlamlandırılması zorlaşır. Ancak ilişkisel yaklaşım devleti bir çok öznenin ve kurumun eylem ve fikirlerinin sonucunda oluşan heterojen bir yapı olarak gördüğünden bu gibi durumsallıkları anlamlandırmada avantajlı konumdadır.

Kurum ve özneleri hareket ettikleri bağlamlar çerçevesinde birbirileriyle olan ilişkileri üzerinden tanımlamak için ilişkiselci yaklaşım iki önemli varsayımdan yola çıkmaktadır. Birincisi yapılar aktörleri öncelemez, çünkü yapılar ancak insanların davranışlarıyla var olabilirler. Bu yüzden birbirilerinden bağımsız varlıkları olmadığından ne özneler ne de nesneler gerçektir. Aralarındaki temas ilişkisel ve diyalektiktir. Bir başka deyişle ancak birbirileriyle olan ilişkisel temas sayesinde var olurlar. İlişkisel yaklaşımın ikinci ontolojik temeli ise maddi ve düşünsel olan arasındaki farkın yalnızca analitik olduğudur. Öznelerin sahip olduğu fikirler maddi gerçekliklere dönüşebilir, ama bu ancak öznelerin bulundukları çevrenin aracılığı ile gerçekleşebilir (Hay, 2001). Dolayısıyla Hay, benzer maddi koşullarda bulunan farklı öznelerin çıkarlarını ve tercihlerini farklı inşa edebilecekleri ve zamanla bu çıkar ve tercihlerini değiştirebileceklerini belirtir (fikri ve maddi etkenler değiştikçe). Bu varsayımlar siyasi ve sosyal analizlerde özneler ve fikirleri için salt yapısalcı yaklaşımların açamadığı bir alan açma fırsatını vermektedir. Öznelerin fikirleri belirli yapısal kısıtlamalar veya fırsatlar içinde somut etkilerde bulunabilmekte, yeni yapısal formülasyonlar yaratabilmektedir.

1960 ve 1970'lerde devlet kuramına Marksist ilginin artması sonucunda devlet ile ilgili daha tarihsel ve karşılaştırmalı bir bakış doğmuştur. Ne var ki bu tartışmalar kuramsal olarak fazlasıyla soyut düzeyde yapılmış, kapitalizmin aldığı farklı şekiller ve siyasi rejimlerin tarihsel değişkenlikleri göz ardı edilmiştir. Yine de bu süreçte devlet kuramları için önemli bir dönüm noktası işlevsel (functionalist) analizden şekil (form) analizine geçiş olmuştur (Jessop, 2008, p. 58). Bunun anlamı ise artık devletin şekli, sermaye için yerine getirilmesi gerektiği söylenilen işlevlerinden türetilmemesi, aksine incelemelerin artık kapitalist devletin halihazırdaki şeklinin sermaye birikimi ve siyasal sınıf egemenliği işlevlerini nasıl problematize ettiği ve tehdit ettiğidir (Jessop, 2008, p. 58-59).

Devletin şeklini belirleyen güçlerin kavranması için devletin basit bir birim veya bir sınıfın hizmetinde üniter bir yapı olarak görmek yerine karmaşık bir sosyal ilişki şeklinde görülmesi gerekmektedir. Nitekim Jessop, stratejik-ilişkisel yaklaşımını oluştururken Foucault'dan ve söylem analizinden etkilendiğini açık bir şekilde belirtmektedir. Foucault devlet ve devlet gücünün, devletin önceden belirlenmiş, verili özellikleriyle anlatılmasına karşı çıkmaktadır. Bunun yerine devletin gelişimi ve işleyişi devletle ilgili olması gerekmeyen belli uygulamaların rastlantısal sonuçlarıyla açıklanmasının gerektiğini vurgulamıştır. Devlet gücü merkezileşmiş veya birleşik bir yasal-siyasi güç tarafından uygulanmamakta, aksine çok sayıda ve dağınık halde bulunan kurumlar tarafından uygulanmaktadır. Gücün her yerde birden bulunan doğası ve bireylerin bu gücün pasif hedefleri değil, aktif olarak bu güce katkı yapan özneler oldukları düşüncesi stratejik-ilişkisel yaklaşımı önemli ölçüde etkilemiştir (Jessop, 2008, p. 66). Keza post-yapısalcılık ve söylem analizi de ilişkisel yaklaşımın tanımlanmasında önemli rol oynamışlardır. Bu iki kuram da devletin söylemsel olarak nasıl "inşa" edildiğine vurgu yapmaktadır. Jessop, farklı siyasi güçlerin farklı zamanlarda farklı devlet fikirlerine yönelik uygulama geliştirdiklerini belirtmekte, bu yüzden devletin en iyi ihtimalle çok-yönlü, çok-mekanlı ve çok-boyutlu bir olgu olduğunu, kurumsal mimarisinin, işleyiş usulünün ve faaliyetlerinin egemen siyasi imgelemelerle ve devlet projeleriyle değiştiğini belirtmektedir.

Bu noktada Jessop'un yapı-özne tartışmasına yaptığı katkılar ortaya çıkmaktadır. Öznelerin amaçlarını gerçekleştirmek için yollar yaratabilmeleri ve bu yolları yeniden yaratabilmeleri bu özneleri (birey veya kolektif) içinde bulundukları çevre ile dinamik bir ilişki kurmalarını sağlamaktadır. Jessop'a göre devlet sınıf güçlerin dengesiyle oluşan bir alandır ve önceden belirlenmiş bir kurumsal sabitliği yoktur. Devlet bu açıdan dinamik ve sürekli değişen bir sistemdir (Hay, 2006, p. 75). Ne var ki post-yapısal tezlerden farklı olarak Jessop, devletin geçmiş stratejilerin sonucu olan yapılar ve stratejilerin karmaşık diyalektiği içinde yer aldığını, bu yüzden devleti oluşturan kurumların stratejik olarak seçici olduğunu belirtmektedir. Bunun anlamı devletin yapıları ve işleyiş şekli bazı siyasi stratejilerine diğerlerine nazaran daha açıktır. Bu sebepten ötürü kimi toplumdaki kimi aktörlerin stratejilerini diğerlerine göre avantajlı kılmaktadır (Hay, 2006, p. 75).

Feminist literatürün devlete yönelik farklı tutumlarının gelişimini anlamak için kullanışlı bir araç liberal ve radikal feministlerin bu stratejilerini ifade etmek için kullandıkları "iç-dış" ikililiği, ve bu ikililiği yeni feminist hareketlerin aşma çabasıdır (Kantola, 2006, p. 118). Bu çerçevede liberal feminist gelenek devleti farklı çıkarlar arasında tarafsız bir hakem olarak görmektedir. Böylece kadın hakları savunusu devletin "içinden" yapılabilecektir. Bu bağlamda liberal feministlerin gündemlerinde devlet kurumlarında daha fazla kadının istihdam edilmesi ve toplumsal cinsiyet eşitliği için daha fazla yasanın kabul edilmesi gibi başlıklar bulunmaktadır (Kantola, 2006, p. 119). Liberal feminist yaklaşımın vurgu yaptığı bir diğer önemli nokta kamu alanında kadın ve erkek farkının reddi ve kadınların resmi haklarının güçlendirilmesi ile onlara kamu alanında erkeklerle eşitlik sağlanabileceği düşüncesidir (Kantola, 2006, pp. 119-120).

Diğer taraftan özellikle 1960'larda çıkışa geçen ve "ikinci dalga feminizm" ile özdeşleştirilen radikal feminist teoriler kadınların sistematik olarak istismar edildiğini vurgulamaktadır. Radikal feministler için devlet her şekliyle "özünde ataerkil" (essentially patriarchal) olarak değerlendirmiş, hayatın her köşesinde görülen erkek-egemenliğine karşı mücadele enerjisinin devlete değil sivil topluma yoğunlaştırılması gerektiği belirtilmiştir. Sivil topluma yönelik ve sivil toplum

üzerinden yapılan faaliyetlere en iyi örneklerden biri kadın olmanın ne olduğunu tekrar keşfetmek ve cinsiyetler arasındaki farklılıkların değerini anlamak için yapılan farkındalık-artırma faaliyetleridir (consciousness-raising). İkinci dalga feminizm akademide aslında "bireyin" erkek olduğunu, insan haklarının amaç ve uygulamada erkekleri kapsadığını, "işçi" denildiğinde aslında erkeklerin üretim gücü ve yeteneklerinden bahsedildiğini ortaya çıkarmış, erkek egemenliğin farklı boyutlarını ortaya çıkarmıştır (Scott, 1999, p. 98).

Radikal feminizmin kadın hareketine akademik ve pratik katkılarına karşın Jessop, "ataerkil devlet" kavramının devlete yönelik bir indirgemecilik ve özcülük içerdiği uyarısını yapmaktadır. Görünürdeki farklılıkları ne olursa olsun tüm devletlerin ataerkil düzenin ifadeleri olduğu ve bu düzeni devam ettirmek için erkek-egemen sisteme hizmet ettiği düşüncesi tıpkı ortodoks Marksist düşünce gibi işlevselcidir. Jessop bu noktada çözüm olarak devlete bir derece otonomi ve durumsallık (contingency) atfedebilen feminist literatüre işaret etmektedir. Söz konusu literatür ataerkillik ve toplumsal cinsiyet konularının devleti etkilediğini kabul eden, ancak bu etkinin şekli ve sonuçları üzerine peşin hükümlerde bulunmayan, kadınlar arasındaki farklılıkların da altını çizen ve devlet yapıları ve politika alanlarında sınıf, toplumsal cinsiyet ve etnik kimliklerin karışık ve değişken birleşim şekillerini vurgulayan "üçüncü dalga feminizm"dir (Jessop, 2008, p. 70).

"Üçüncü dalga feminizm" içerisinde başlıca iki akım bulunmaktadır. Ortak noktaları ikinci dalga feminizmin indirgeyici yaklaşımını eleştirmek olan bu iki akımdan ilki kadın kimliklerinin birbirilerinden farklılaştığını vurgulayan "kesişim kuramı" (intersectionality theory), ikincisi ise her türlü kimliği ve tasnifi özgürlüğün önünde engel olarak gören post-yapısalcı feminizmdir. Kesişim kuramları özellikle azınlık toplulukları kadınları tarafından savunulmaktadır. Siyah ve/veya etnik kadınlar, ikinci dalga feminizmi kendi yaşadıkları çoklu baskı şekillerini anlamadıkları ve bu konuya yeterince eğilmedikleri için eleştirmektedirler (Mann & Huffman, 2005, p. 58). Tüm kadınların aynı sosyo-ekonomik düzeyi, kültürü ve siyasi kaygıları paylaşmadıklarını vurgulayan kesişim

teorisi, “kadın” kimliğini homojen bir grup şeklinde ifade etmenin bazı kadınların dışlanmasına yardımcı olduğunu belirtmektedir.

Postmodern veya post-yapısalcı feminizm farklı kimlikleri sosyal ve siyasi olarak özgürleştirici kavramlar olarak değil, dil, söylem ve kültürel pratiklerin bir çıktısı olarak görmektedir. Bu durumda kimliklerin disiplin edici ve kısıtlayıcı güç ilişkileri doğurduğu vurgulanmaktadır (Mann & Huffman, 2005, p. 63). Dolayısıyla, her ne kadar kesişim kuramı ikinci dalga feminizmi “özcülük” (essentialism) yaptığı için eleştirse de, post-yapısalcı feministler kesişim kuramcılarının da özcü olduğunu, ikinci dalga feministleriyle aralarındaki tek farkın ise kesişim kuramında özcülüğün daha detaylı kategorilerle yapıldığını belirtmektedir. Siyah kadınların da arasında ve/veya kadınların sosyal sınıfları veya cinsel eğilimleri arasında da farklılıklar bulunmaktadır. Bu mantıkla hareket edildiğinde aslında her türlü kimlik tasnifi kısıtlayıcı olmakta, yeni kimliklerin serbestçe oluşumlarını engellemektedir. Örneğin eşcinsel teoriye göre cinsel veya toplumsal cinsiyet kimlikleri sabit değildir ve cinsel eğilimler çok-yönlü, çok-şekilli ve çok-etaplıdır (Jessop, 2008, p. 158).

Genel olarak post-yapısalcılığa, özel olarak post-yapısalcı feminist yaklaşımlara yönelik iki önemli eleştiri bulunmaktadır. Birincisi söylemsel süreçlere gereğinden fazla vurgu yapılması ve bunun sonucunda kurumlardan ve politikalardan dikkatin çekilmesidir. Neticede güç ilişkilerinde statükonun yeniden üretilmesinin kolaylığına nazaran değişiklik yaratmanın zorluğu hafife alınmaktadır (Kantola, 2006, p. 130). Ayrıca modern devlet için hukukun, anayasal şiddetin ve bürokrasinin devam eden önemi ihmal edilmektedir. Post-yapısal feminist argümanlarına yönelik yapılan önemli bir eleştiri ise “kadın” ve “erkek” kavramlarının değişken olgular olduğu kavramsallaştırmasının kadınların hak mücadelelerine engel teşkil ettiğidir. Zira postmodernizmin kimlik konusuna yaklaşımının kadınların kadın kimliğine duydukları aidiyete ve gelecek mücadelesi adına geçmişlerini sahiplenmelerine engel teşkil ettiği vurgulanmaktadır (Benhabib, 1995, p. 29).

Her ne kadar Marksist ve Feminist devlet kuramları öznelerin eylem ve fikirlerinin yapıları ve kurumları değiştirici ve inşa edici özelliklerini kabul etse de, devleti

somut şeklini inkar etmemektedirler. Sonuçta bu kuramların "özgürlükçü" (*emancipatory*) idealleri bilinebilir bir gerçekliğin olduğu ve eşitlik mücadelesinin bu gerçeklikle yüzleşerek verilebileceği inancı üzerine kurulmuştur. Devletin post-yapısalcıların izinde salt soyut bir şekilde tanımlanması toplumsal hareketlerin örgütlenmesi ve mücadelesi için son derece zor bir hedef oluşturacağından, Marksist ve Feminist kuramların devletin aslında sadece öznelerin düşünselliklerinde var olduğu savını yadsımasına neden olmuştur.

Kurumsalcı devlet kuramlarının toplumda belli bir grubun haklarını savunmak gibi bir iddiası olmamıştır. Kurumsalcılık 20. yüzyılın başında anayasa gibi resmi kurumların siyasi davranışları nasıl etkilediğini açıklamak için geliştirilmiş, çoğunlukla betimleyici ve karşılaştırıcı bir metodoloji benimsemiştir. Devletleri işlevleri üzerinden tanımlamak yerine işleyiş usulleri (*modus operandi*) üzerinden tanımlamayı seçmiştir. Devletler kendi personeli olan ve kendilerini muhafaza etmek için diğer toplumsal aktörlerle mücadele ve müzakere eden kurumlar olarak tanımlanmıştır. Ancak kurumsalcılığın kurumların belirleyiciliğine yaptığı vurgu öznelerin bu yapılar içerisindeki değiştirici rollerini göz ardı etmesine sebep olmuş, bu eksiklik ise kurumsallığın bazı önemli tarihsel dönüm noktalarını ve özellikle İkinci Dünya Savaşı öncesi ve sonrası demokratik kurumların çöküşünü açıklayamamasıyla sonuçlanmıştır. 1970'lerde ortaya çıkan yeni kurumsalcılık devlet odaklı yaklaşımında öznelerin kendilerini yönlendiren kurumlar içerisinde eylem ve fikirleriyle yeni gerçeklikler yaratabileceğini kabul etmiş, toplumsal ve bireysel normları, değerleri ve davranış kalıplarını enformel kurumlar olarak açıklamalarına dahil etmiştir. Yeni kurumsalcı yaklaşım her zaman vurguladığı kurumların bulundukları zaman ve mekan bağlamında anlamlandırılması gerektiği savına yapı ve öznelerin diyalektik etkileşim içerisinde ele alınmaları gerektiği vurgusunu ekleyerek Marksist ve Feminist kuramların evrildikleri noktaya varmıştır.

Türkiye'de devlet - sivil toplum ilişkisini karşıtlık üzerine kuran tarihsel anlatımın ve insan hakları örgütlerinin devlete ve bu ilişkiye yönelik algılarının kuramsal sorgulamasını takiben bahse konu karşıtlığın saha araştırmasıyla incelenmesi

yoluna gidilmiştir. 17 ilde İİHK'ların başında yer alan vali yardımcıları ve bu kurullarda yer alan veya almak isteyen kadınların insan hakları savunucuları kadın STK'ları temsilcileriyle derinlemesine mülakatlar yapılmıştır. Bu mülakatlar devlet - sivil toplum ilişkilerinin yerel platformlardaki başarısına veya başarısızlığına katkı yapan etmenler konusunda önemli bulgular ortaya çıkarmıştır. Ayrıca İİHK'ların yerellerde çalışıyor olmaları Türkiye'nin farklı bölgelerinde devlet - sivil toplum ilişkisinin nasıl farklılaştığının anlamak için fırsat sunmuştur. Özellikle vali yardımcılarının kurullara hangi STK'ları nasıl seçtikleri üzerine yoğunlaşılmıştır.

Kadın STK'ları devletin seçiciliğinin derinliğini ortaya çıkarmak ve bölgesel olarak karşılaştırmak için seçilmiştir. Kadın hakları örgütleri bir yandan amaçları ve savundukları ilkeler açısından insan hakları yelpazesi içinde bariz bir özgüllük (specificity) yansıttıkları için, öte yandan küresel, bölgesel, ulusal ve yerel boyutlarda aslında sivil toplumun birçok alanında oldukça sık görülen çeşitlikleri net olarak yansıttıkları için vali yardımcılarıyla birlikte araştırmanın özneleri haline getirilmişlerdir. Her türlü evrensel hak iddiası sivil toplum içerisinde birden fazla odak tarafından temsil edilmektedir. Kadın hakları gibi evrensel ve özgül bir konunun da zaman, mekan (bölgesel farklılıklar), deneyim (ör. kadına yönelik ayrımcılığa ek olarak etnik ayrımcılık), vb. birçok unsurun etkisiyle farklı şekillerde temsil edilmesi doğaldır. Türkiye'deki kadın hakları örgütleri bu açıdan uygun bir araştırma evreni oluşturmuştur. Nitekim Türkiye'de ulusal ve yerel ölçekte çalışan ve faaliyet gösterdikleri alanların çeşitliliği, temsil ettikleri kadın kesimlerinin kimlikleri, benimsedikleri ideoloji, devlet algıları ve bu algıya yönelik tutumları arasında büyük farklılıklar bulunan birçok kadın hakları örgütü vardır. Bu kadın hakları örgütleri farklı amaçlarına ulaşmak için farklı stratejiler de kullanabilmektedirler. Bu nedenle devlet temsilcilerinin kurumsal (ya da kişisel) tutumları ve uygulamaları yanında kadın örgütlerinin farklı stratejilerinin onların devlet ile işbirliğini nasıl etkilediği araştırılmıştır. Kadınların toplumsal cinsiyetlerinin yanı sıra farklı kimliklerinden ötürü çok yönlü ayrımcılığa uğramaları ve bu yüzden ataerkilliği farklı boyut ve şekillerde deneyimlemeleri sebebiyle kadın STK'larını kurullara seçmek için ortaya konulacak kriterlerin ve kadın STK'larının bu süreçteki deneyimlerinin çok katmanlı bir seçiciliği ortaya

çıkaracağı düşünülmüştür. Bir başka deyişle, devlet yetkililerinin verecekleri cevaplar bu yetkililerin sadece feminist kadınlarla değil, etnik kimlik gibi farklı kimlikleri feminist kimlikleriyle birleşen kadınlarla işbirliğine nasıl yaklaştığını ortaya çıkaracağı tahmin edilmiştir. Dolayısıyla valiliklerin hangi kadın STK'ları ile işbirliği yapacaklarına yönelik seçimleri konusunda yapılan araştırma, hangi kadın STK'ların ne gibi nedenlerle devletle işbirliği yapmak istediği (veya istemediği) ve bu süreçteki deneyimleri ile tamamlanmıştır.

Öncelikle 17 ilde İİHK'lara başkanlık eden vali yardımcıları ve kurullarda faaliyet gösteren veya üye olmak isteyen kadın STK'ları temsilcileriyle yapılan derinlemesine mülakatlar, kurullara yönelik Paris Prensipleri temelinde yapılan eleştirilerin büyük ölçüde doğru olduğunu göstermiştir. İİHK'ların etkili ve bağımsız bir şekilde işlemelerinin önündeki en büyük engel bağımsız bir bütçesi ve eğitimli personelinin olmamasıdır. Kurulların bağımsızlığını ve etkisini kötü etkileyen bir diğer unsur ise vali yardımcıların kurul kararlarında ve toplantılarında kurul üyelerine nazaran ellerinde bulundurdukları güçtür. Vali yardımcıları kurullara STK'ları seçerken taşra bölgelerinde STK'ların kapasite eksikliğine atıf yapmış, dolayısıyla STK'ların kurullara seçimlerinde en önemli kriterlerin bu STK'ların faaliyet düzeyi ve etkinlikleri olduğunu ifade etmiştir. Bir diğer kriter STK'ların "politize" olmaması isteğidir. Bu kriter özellikle doğu illerinde İİHK'lara başkanlık yapan vali yardımcıları tarafından sıklıkla dile getirilmiştir. Ne var ki araştırma çerçevesinde etkin STK'ların genellikle politize olmuş STK'lar olduğu ortaya çıkmıştır. Örneğin doğu bölgelerinde Kürt kadınların maruz kaldığı ve bölgeye özgü karakteristikler taşıyan ihlalleri dillendiren etkin kadın STK'ların kurullara üyelik başvurularının reddedildiği görülmüştür. Vali yardımcıları bu gibi uluslararası bağlantıları ve açık bir şekilde feminist gündemleri olan örgütlerin başvuruları karşısında, faaliyetleri genellikle bağış ve yardım toplamayla sınırlı veya kadınların insan hakları açısından tek bir konu üzerine yoğunlaşan kadın STK'larıyla işbirliği yapmayı tercih etmiştir.

Araştırma tarafından doğu illerinde ortaya çıkarılan devlet seçiciliği, araştırmanın başında oluşturulan hipotezin de geçerliliğini sergilemiştir. Bahse konu hipotez,

devletin toplumda kimlerle işbirliği yapacağı konusundaki seçiciliğini belirleyen politika ve söylemine ters düşen kimliklerin savunuculuğunu üstlenen kadın STK'ların, kamusal alanda devletle işbirliği yapmalarının görece daha zor olduğudur.

Ne var ki tez için yapılan saha araştırması, devletin sivil toplumla sıfır toplamlı bir mücadele içinde, sivil toplum alanını kontrol etmek isteyen, düşünen ve strateji üreten bir aktör olduğu savının ve buna bağlı anlatımın yeniden düşünülmesi gerektiğini ortaya koymuştur. Araştırma açık bir şekilde yerel devlet yetkilileriyle güven ağı oluşturmak için özellikle İİHK'lar gibi yerel müzakere platformlarına katılarak zaman ve çaba harcayan STKların ön yargıları kırarak bir zihniyet değişiminin öncüleri olabildiklerini göstermiştir.

Araştırma ayrıca İİHK'ların insan haklarının korunması ve geliştirilmesi için halen son derece büyük potansiyel taşıdıklarını sergilemiştir. Bu potansiyeli çok yönlü ayrımcılığa maruz kalan Kürt kadın STK'ları ortaya çıkarmıştır. Kürt kadın STK'ların İİHK'lara üye olma ve devlet yetkilileriyle çalışma konusundaki ısrarı, İİHK'ları müzakere platformları olarak görmeleri ve zihniyet değişimini tetikleyebileceklerine dair inançları somut meyveler vermiş, kadınların insan hakları ihlallerini önlemek açısından önemli kazanımlar elde edilmiştir. Yerelliklerde devletle çalışma konusundaki bu ısrar ve kararlılık Türkiye'de devlet - sivil toplum ilişkileri konusunda hakim olan anlatımın sorgulanmasını gerektirmektedir. Daha da önemlisi, devletin insan haklarında kurumsallaşma çabalarının yeniden değerlendirilmesi ve bu konuda yeni bir yaklaşımın benimsenmesi gereğinin altını çizmektedir.

Gerçekten de Türkiye'nin doğu bölgelerinde Kürt kadın STK'larının İİHK'larda üyeliklerine karşı devlet yetkilileri tarafından seçici davranıldığı görülmüştür. Ülkenin batısında bu kimlik kesişimini yaşamayan kadın STK'ları devletle işbirliği konusunda aynı engellere takılmamaktadır. Hatta bazı durumlarda İİHK'ların kapasitesi yeterli görülmediğinden veya kadınların insan hakları savunucuları olarak seslerinin halihazırda yürütülen işbirliği yollarında daha iyi duyulabileceği düşüncesiyle İİHK'lar üzerinden devletle işbirliği yapmaya sıcak bakmamışlardır.

Ancak doğu bölgelerinde etkin kadın STK'ların kararlı bir şekilde İİHK üyeliğine başvurmaları, bu örgütlerin devletle işbirliğine verdikleri önemi ve üyeliğin getireceği artı değer konusunda farkındalıklarını sergilemiştir. Belli bir bölgede veya yerellikte çalışan ve tabanı daha spesifik bir topluluktan oluşan insan hakları örgütleri, daha çok kaynak sahibi STK'lara oranla devletle her düzeyde işbirliği yapma konusunda daha büyük bir aciliyet hissetmektedirler. Başvurdukları 23 ilin 12'sinde İİHK üyeliğine kabul edilen KAMER, İİHK'larda temsil edilmeyi bir strateji haline getirmiştir. Herhangi bir yasal dayanağı veya inandırıcılığı olmayan mazeretlerle kurullara üyelik talepleri reddedilen KAMER, kurul üyelerinin yerleşmiş ataerkil zihniyetini değiştirebilecekleri olan inançlarından yola çıkarak devletle çalışmanın önemine vurgu yapmıştır. Bu vurgunun altında yatan temel nedenler arasında örgütün ancak devletle çalışarak diğer devlet kurumları tarafından ciddiye alınması, insan hakları ihlallerine sebep olan sorunları ve sistemleri içeriden anlama yollarının açılması ve yerel uzmanlıklarını kullanarak bu ihlalleri önleyebilmek için sorunların kaynağına yakın çalışabilmeleri yer almaktadır. Ayrıca devlet yetkilileriyle İİHK'ların ötesinde ağların kurulması mümkün olabilmekte, İİHK'ların içinde oluşturulan empati ve anlayış kurul toplantıları dışında da yardım ve destek ağları oluşturabilmektedir. "Kamu yararına çalışan dernek" statüsünde olan ve farklı bir üye kitlesi ile çok farklı bir bağlamda çalışmalarını yürüten İzmir Kadın Haklarını Koruma Derneği de aynı şekilde devletle çalışmanın gerekliliğine işaret etmekte, devlet yetkilileriyle her zaman üretken iletişim kurabilme yeteneklerine güvendiklerini belirtmektedirler. Yapılan mülakatlarda İzmir Kadın Haklarını Koruma Derneği temsilcileri müzakere tekniklerine verdikleri önemi vurgularken özellikle emniyet yetkilileriyle çalışmalarında yetkililerin güvenini kazanmak için bu tekniklerden ne kadar yararlandıklarını vurgulamışlardır. Bu güven kazanıldıktan sonra insan hakları ihlalleriyle sorunun merkezinden mücadele etme fırsatını ele geçirdikleri ifade edilmiştir.

Tez için yürütülen saha araştırması İİHK'ların potansiyeline ışık tutmuştur. Ne var ki insan hakları örgütleri ve savunucularının devletle işbirliği konusundaki çekinceleri ve Paris Prensiplerine uyum konusunda yaptıkları vurgu bu potansiyelin göz ardı edilmesine sebep olmuştur. Ancak belirtilmelidir ki Paris Prensipleri

dünyada ulusal insan hakları kurumlarının kurulmasını teşvik edecek şekilde geniş tutulmuş, ülkelerin kendi öznel koşullarına göre bu kurumları oluşturabileceklerine vurgu yapılmıştır. Paris Prensipleri ulusal insan hakları kurumlarının etkinliği ve etkililiği konusunda bir garanti oluşturmamaktadır. UİHK'lar çalışmalarında, devletleri ve hükümetleri kısıtlayan siyasi faktörleri göz önüne almadığı ve bu açıdan devletle etkileşime girmeyip STK'lar gibi işledikleri sürece etkileri kısıtlı kalacaktır. Paris Prensiplerini tek tipleştirici standartlar olarak yorumlamak suretiyle oluşturulan UİHK'ları devletin araçları oldukları gerekçesiyle reddetmek yerine, ülkelerin kendilerine özgü siyasi dengelerini göz önünde bulunduran kurumlar inşa etmek, bu kurumlarla etkileşim halinde meşruiyetlerinin kamuoyunda geliştirilmesini sağlamak ve sürekli olarak bu kurumların daha bağımsız ve etkili olmalarını için gerekli adımları atmak daha yapıcı bir yol olarak görünmektedir. Bu yaklaşımın benimsenmediği durumlarda UİHK'lar gerçekten de devletin araçları ve seçiciliğin geliştirildiği platformlar olma riskiyle karşı karşıya kalmaktadırlar. Devlet sivil topluma karşı sürekli mevzi kazanmaya çalışan bir oluşum yerine iktidar mücadelesinin bir alanı olarak görüldüğü taktirde, insan hakları savunuculuğu sadece devlete karşı değil, devletle birlikte, devletin içinde ve devlet üzerinden yapılabilecektir.

Türkiye İnsan Hakları Kurumu (TİHK) etrafında dönen tartışmalar bu konuya iyi bir örnek sunmaktadır. İnsan hakları örgütleri ve savunucuları bu kurumu kuran yasa tasarısının sivil topluma danışılmadan yapıldığını, bu yüzden Paris Prensiplerine uymadığını ve kurulacak olan TİHK'nın devletin bir aracı olmaktan başka bir işlevinin olamayacağını belirtmişlerdir. Ancak hükümet TİHK Kanununun genel gerekçesinde Paris Prensiplerine uygun bir kurum kurulması ihtiyacına vurgu yapmış, TİHK'nın bu ihtiyacı karşılayacağını ifade etmiştir. Detaylı bir şekilde incelendiği taktirde, TİHK Kanunu metninde Paris Prensiplerine karşı bir hüküm bulunmadığı söylenebilir. Zaten insan hakları savunucularının getirdiği eleştirilerin çoğu Türkiye'de devletin geçmiş uygulamalarına bakarak Kanunun uluslararası standartlara göre uygulanmayacağı veya uygulanamayacağını öne sürmektedir.

TİHK'ya yaklaşım konusunda izlenebilinecek bir diğer yol İİHK'ların birikimlerinin ve potansiyellerinin TİHK çatısı altında kullanılmasıdır. İİHK'lar Paris Prensiplerine uygun olmasalar da, yerelliklerde müzakere platformları olma ve yerel uzmanlıkları ve ağları insan hakları ihlallerini engellemek yönünde büyük potansiyele sahiptirler. İİHK'lar kuruldukları tarihten bu yana (2000 yılı) önemli tecrübe birikimi edinmiş, binlerce insan hakları ihlali iddiasını incelemişlerdir. Bu iddiaları çözüme kavuşturdukları durumlarda öğrendikleri iyi uygulamalar ve çözümsüzlük durumunda aldıkları derslerden faydalanılması gerekmektedir. Başarıyla yürütülen İİHK deneyimleri siyasi parti temsilcileri ile STK'lar, devlet yetkilileri ve meslek odaları temsilcilerini aynı masa etrafında toplamayı başararak önyargıların kırıldığı önemli bir müzakere demokrasisi okulu olmuşlardır. Tez için yürütülen araştırmada da görüldüğü üzere bir dizi kadın STK'sı devlete karşı ama aynı zamanda devletle birlikte ve devletin içinden taleplerini dile getirme fırsatı bulmuş, devlet yetkilileriyle daha etkili iletişim kurmayı öğrenmişler ve bunun sonucunda amaçlarına daha kolay bir şekilde ulaşabildiklerini ifade etmişlerdir.

İİHK'ların TİHK'nın işleyişinde rol sahibi olmaları mümkündür. Bu süreçte İİHK'ların daha bağımsız çalışabilmeleri için gerekli düzenlemeleri de hayata geçirmek mümkün olacaktır. 21.06.2012 tarihli 6332 sayılı Türkiye İnsan Hakları Kurumu Kanunu'nda İİHK'lara yönelik iki madde bulunmaktadır. Kurumun "İşkence ve Kötü Muameleyle Mücadele Birimi"nin görevlerini sıralayan 11. maddesinin 2. fıkrasında söz konusu hizmet biriminin görevleri arasında İİHK'ların özgürlüğünden mahrum bırakılan ya da koruma altına alınan kişilerin bulundukları yerlere gerçekleştirdikleri ziyaretlere ilişkin raporlarını incelemek ve değerlendirmek bulunmaktadır. Bu hüküm başlı başına İİHK'ların tutukluların veya idari gözetim altında bulunanların tutulduğu yerleri denetleme faaliyetlerine devam etmesi için yasal dayanak sağlamaktadır. Yapılan mülakatlarda vali yardımcıları ve STK temsilcilerinin cezaevlerinden çok sayıda şikayet geldiği yönlerindeki beyanları göz önüne alınırsa, İİHK'ların sürdürmeleri beklenilen bu görevin insan haklarının korunması ve ihlallerin önlenmesi açısından önemi daha iyi anlaşılacaktır. Söz konusu Kanunda İİHK'lara bir yerde daha atıf yapılmaktadır. Geçici Madde 1'in 7. fıkrasında İİHK'ların Kurum büroları kuruluncaya kadar

Kurum bürosu olarak görev yapacakları hükme bağlanmıştır. Ancak söz konusu "büroların" ne zaman kurulacağı Kanunda belirsizdir. Bu konudaki tek düzenleme Kanunun 11. maddesinin 5. fıkrasında yer almakta, Kurumun teklifi üzerine Bakanlar Kurulunun büroların kurulmasına veya kaldırılmasına yetkili olduğu hükmedilmektedir. Aynı maddede büroların görev ve yetkilerine ve diğer hususlara ilişkin usul ve esasların Kurul tarafından belirleneceği belirtilmektedir. Bu büroların ne zaman ve nasıl kurulacağına ve kuruldukları zaman İİHK'ların akıbetinin ne olacağına dair spekülasyonun bir faydası olmasa da, İİHK'ların tecrübelerinden faydalanmak için bir fırsat penceresi olduğunun anlaşılması önemlidir. İİHK'lar yerelliklerde kurulmuş ve yıllardır çalışıyor olmaları TİHK'da olmayan ancak insan hakları ihlallerinin engellenmesi ve insan haklarının korunması açısından son derece önemli özelliklerdir. TİHK'lara bağlı bir şekilde çalışan İİHK'ların ise vali yardımcıları yerine TİHK Kurumuna hesap vermek ve sundukları projelerin TİHK tarafından finanse edilmesini sağlamak suretiyle daha bağımsız ve etkili işleyebilmeleri mümkün olabilir. İİHK üyelerinin belirli sürelerle yenilenmesi sağlanabilir, vali yardımcılarına bu süreçte yönlendirici ve arabulucu bir rol tahsisi edilebilir. İİHK'lar yerelliklerde bireysel başvuruları almaya devam ederek TİHK'nın iş yükünü önemli ölçüde hafifletebilir, TİHK ise zor ve siyasi çatışma yaratan konularda bir temyiz makamı şeklinde faaliyet gösterebilir. Aynı zamanda İİHK'lar insan hakları konularında eğitim merkezleri olarak işleyebilir, kamuya açık düzenleyebilecekleri toplantılar müzakere demokrasisi kültürünün gelişmesine önemli katkılar sağlayabilir.

Ancak bu fırsat penceresi kaçırılırsa TİHK'nın insan hakları örgütleri ve savunucularının eleştirilerini doğrular bir şekilde en iyi ihtimalle göstermelik, en kötü ihtimalle insan hakları alanında hükümetin sözcülüğünü yapan ve devletin ihlallerini örten bir kurum haline gelmesi mümkündür. İİHK'larla birleştirilmeyen bir TİHK ise Türkiye'de yıllarca biriken deneyimlerden faydalanamamakla kalmayacak, başarılı İİHK örneklerinde oluşturulan yerel ağların ve devlet-STK işbirliği açısından kurulabilecek yeni ağların zemininin yok olmasına sebebiyet verecektir.

APPENDIX F: TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü	
Sosyal Bilimler Enstitüsü	X
Uygulamalı Matematik Enstitüsü	
Enformatik Enstitüsü	
Deniz Bilimleri Enstitüsü	

YAZARIN

Soyadı : Arıner
Adı : Hakkı Onur
Bölümü : Siyaset Bilimi ve Kamu Yönetimi

TEZİN ADI (İngilizce) : INSTITUTIONALIZATION OF HUMAN RIGHTS IN TURKEY: EXPERIENCES AND PERCEPTIONS OF WOMEN'S HUMAN RIGHTS ACTIVISTS AND STATE OFFICIALS

TEZİN TÜRÜ : Yüksek Lisans [ ] Doktora [X]

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir. [ ]

2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir. [X]

3. Tezimden bir bir (1) yıl süreyle fotokopi alınamaz. [ ]

TEZİN KÜTÜPHANEYE TESLİM TARİHİ: