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WELFARE-TO-WORK ADMINISTRATIONS: A COMPARATIVE  
PERSPECTIVE**

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# EXTENDING PUBLIC SERVICE NORMS TO PRIVATIZED WELFARE-TO-WORK ADMINISTRATIONS: A COMPARATIVE PERSPECTIVE

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*The trend of outsourcing public services to private contractors has led scholars to stress the need to “outsource” public service norms to these contractors in order to secure constitutional and administrative law rights and protections. However, to date, only a few studies have examined the application of public service norms to private contractors. This article aims to explore this question in the context of privatized welfare-to-work services. Through comparative analysis of the regulatory schemes governing these programs in the U.K, Australia, Wisconsin and Israel, the article examines whether, how and to what extent public service norms are extended to the private contractors operating these programs, as well as underlying similarities and differences in their respective regulations. The article concludes that while there is a clear movement towards extending public service norms to the private welfare-to-work providers, the extension of the norms sometimes lacks clarity and consistency and does not reveal a coherent theory or an underlying concept as to which norms are extended, how, or to what extent.*

## INTRODUCTION

The trend towards outsourcing public services and functions to private actors raises concerns that privatization may lead to erosion of public service norms and enable governments to avoid their traditional legal obligations (Aman 2002 ; Diller 2000 ; Minnow 2005). Minnow; Since public law usually does not apply to private entities,

many scholars stress the need to “outsource” public law norms to private entities exercising discretionary governmental powers in order to secure constitutional and administrative law rights and protections (e.g., Aman 2002 ; Metzger 2003 ; Rosenbloom and Piotrowski 2005). Some even argue that instead of seeing privatization as a way to shrink government, it should be seen as opportunity to extend public service norms to the private sphere (Freeman 2003).

However, to date, only a few studies have examined the application of public service norms to private actors providing public services (e.g., Mulgan 2005 ; Sellers 2003), and generally these studies tend to eschew a comparative perspective. This may result from the difficulty of accessing detailed evidence on the use of government contracts for extending public norms because most contracts are treated as commercially confidential (Mulgan 2005).

This article aims to explore *whether, how, and to what extent* public service norms are extended to private contractors in the context of privatized welfare-to-work services. The context of welfare-to-work programs presents a good case study since the administration of these programs is complex and politically sensitive, raising issues of accountability and participation. Since the contracting-out of welfare-to-work programs is a global trend (Considine 2001 ; Sol 2005), this context enables comparative research. Thus, the research question is examined in four political entities that have recently experimented with outsourcing reintegration services: United Kingdom, Australia, Israel, and the US state of Wisconsin.

By analyzing the relevant statutes, by-laws, administrative regulations, manuals, code of conducts and contracts, the study examines which public service norms are extended to the private reintegration agencies; which public norms are applied fully and which partly; and it considers the similarities and differences between the cases, along with possible reasons for these.

## **PUBLIC SERVICE NORMS AND PRIVATIZATION**

The concept of distinctive “public service norms” is rooted in the longstanding understanding that public agencies and public servants should be subject to a more demanding code of conduct than private actors. The rationale for the distinction between governmental and nongovernmental activity relies on two unique aspects of

government: its legitimate powers of coercion and its accountability to citizens (Mulgan 2005, 55-56). More generally, imposing higher standards of conduct on the state stems from the imbalance of power between the state and the individual, and the state's capacity to act in ways that reduce the dignity, autonomy, security, and well-being of the individual (Oliver 1997, 233).

Traditionally, public law is implemented through what can be described as a "labeling" approach (Aman 2002, 1701). If an action is labeled "public", the public law norms are applied; and if private the private law norms are applied. Moreover, the application of public law is often based on a "single package" concept, according to which once an action was labeled "public" all the set of public law norms apply indivisibly (Aronson 1997, 53).

Although there is no hard and fast list of "public service norms" (Jorgensen and Bozeman 2007 ; Salminen 2006, 177), a review of the administrative law and the public management ethics reveals that traditionally these norms usually include the following: transparency, fairness, participation, accountability, consistency, rationality, legality, due process, impartiality, expertise, reliability, honesty, accessibility to judicial and administrative individual grievance procedures, and respect for human rights (Jorgensen et al. 2007 ; Mulgan 2005 ; Salminen 2006 ; Taggart 1997).<sup>1</sup>

"New Public Management" and "New Governance" reforms of the 1990s and 2000s dramatically influenced the development of public service norms in two major aspects. First, they pushed for the adoption of new "post-bureaucratic" norms from the private sector, such as innovation, serviceability, customer choice, and accountability for results (Salminen 2006). Moreover, greater emphasis was placed on certain traditional values, such as effectiveness, efficiency, and transparency (including information about targets and results achieved) (Aronson 1997, 58 - 63). Second, as mentioned above, these reforms encouraged increased reliance on private actors for the provision of public services. Naturally, this movement blurred the traditional distinction between public and private action (Aman 2002 ; Craig 1997).

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<sup>1</sup> This list focus on the norms associated with the interaction of public servants with individual citizens and the public at large. It should be mentioned that there are additional aspects of public service norms that refer to the internal organization of public administration and its hiring and employment practices (Jorgensen et al. 2007 ; Mulgan 2005, 59).

The replacement of public administration with privatized or semi-privatized forms of administration challenges the public/private dichotomy at the basis of the traditional understanding of public law norms. As noted, there is relatively widespread agreement among scholars that private service providers must be accountable and comply with public law norms. However, the precise nature of these norms and the extent of their application to private contractors is open to debate (Freeman 2003, 1302). Some argue that the extension of norms should be comprehensive and should be at the same extent as public entities performing the same function (Aman 2002 ; Diller 2002, 1310). Others argue that the extension of norms will necessarily be selective (Rosenbloom et al. 2005, 118) and can be done through private law provisions (Aronson 1997). Moreover, some scholars suggest focusing on extending public service norms through legislative and administrative regulations (Freeman 2003 ; Metzger 2003), particularly because of the reluctance of courts to intervene and apply public service norms to private contractors through judicial review (Aman 2002, 1702).

#### **METHODOLOGY AND DATA**

The research examines the application of public service norms – traditionally applied only to public agencies and public servants – to private welfare-to-work contractors and their employees in four case studies: Wisconsin, Australia, the UK and Israel. All these political entities (three countries and one state) implemented significant welfare reforms during the 1990s and 2000s. These reforms combined the adoption of new labor market activation policies and the development of New Public Management policies with a special emphasis on a greater reliance on private actors to deliver welfare programs and the creation of a "managed market" for welfare services. The diversity of the cases provides a panoramic view of the subject. However, as in any other comparative research, the comparison is subject to the limits involved in comparing countries and states that differ in institutional design, administrative history, and legal traditions.

The research is based on a comprehensive content analysis of the relevant statutes, by-laws, regulations, manuals, codes of conduct and contracts in the four

countries/states.<sup>2</sup> The focus here is on legislative and administrative methods of extending public service norms to the private contractors; judicial decisions and the contractors' internal regulations were not examined. Moreover, the research examines the regulations, not their enforcement. Clearly, even the most carefully designed public norms regulations will have little effect without proper enforcement.

The analysis refers to core public service norms as they are expressed in administrative law and public ethics research. The selected public service norms include also "post-bureaucratic" norms adopted in public services in recent decades. However, the research focuses on the norms affecting the actions of public servants towards the public – norms that apply to the inner circle of government, such as workplace practices or tendering practices, are not included in this study.

#### THE CASE STUDIES

The following subsections describe briefly the administrative structure of the welfare-to-work programs in the four case studies.

**Wisconsin** – the Wisconsin Works program (W-2) was enacted in 1996 and implemented statewide in September 1997. Wisconsin led the way in United States welfare reform and was amongst the first to contract out its delivery of case management and other services. It also influenced welfare reform programs in countries outside the United States, such as Israel. The delivery of W-2 is contracted out to a mix of public and private agencies. The W-2 agencies are responsible for all aspects of the program operation, including determining eligibility, job readiness assessment and sanctioning in cases of a breach of program requirements. The contractors are assessed according to a set of performance criteria, such as job placements, job retentions and client satisfaction. At the state level, the program is administrated by the Wisconsin Department for Workforce Development (DWD), which is responsible for the tendering and contracting process and for contract management and monitoring W-2 agencies.

**Australia** – The Australian Job Networks (JN) program was introduced in 1998 and included contracting out of almost all the federal welfare-to-work services to private providers. The Department for Employment and Workplace Relations (DEWR) is

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<sup>2</sup> In some cases, in order to access the contracts, a freedom of information request was submitted.

responsible for tendering and contracting, as well as monitoring JN providers. The DEWR has a partnership agreement with the public sector agency Centerlink, which determines the applicants' eligibility and job readiness and refers them to private providers. The JN providers provide job search and job placement services, along with other assistance. If participants do not comply with the program, they are referred back to Centerlink, where they can be sanctioned.

**United Kingdom** – the current form of the Employment Zones (EZ) program began in 2000. As part of a wider welfare-to-work reform (the New Deal), it introduced a market-oriented and outcome-related model of delivering welfare-to-work services (syn 1). Unlike the systems in Wisconsin and Australia, the EZ reflects a relatively small portion of welfare-to-work programs in the UK. It started as a pilot in 13 deprived areas with high unemployment rates, but there is an intention to expand it. The public sector agency, Jobcentre Plus, that is responsible for most of the other welfare-to-work programs, conducts an eligibility test and refers applicants to private providers in the program areas. In the first stage, the providers are responsible for assessing the participants' work capacity and preparing an action plan. In the second stage, which can take up to 26 weeks, the action plan is put into effect. If the case manager has doubts as to the participant's compliance with the program s/he refers the participant back to Jobcentre Plus. The UK department for Work and Pensions (DWP) is responsible for the contracting and for monitoring the EZ.

**Israel** – the Israeli welfare-to-work program was implemented in 2005 as a pilot in four regions. The program, which was inspired by the W-2 program, included a significant reliance on private contractors for the administration of the program. Contractors are responsible for establishing "work centers," providing employment services, and enforcing the activity test for eligibility for income support allowances. The law provides the contractors' case managers with wide discretionary powers in preparing an employability plan and the allocation of work support services. Case managers also have the power to sanction participants who do not comply with program requirements. A special department in the Industry and Trade Ministry is responsible for the tendering stages and for overseeing the contractors' activities.

## FINDINGS

Table 1: Application of Public Service Norm to Private Welfare-to-Work contractors

Norm	Australia	UK	Wisconsin	Israel
<b>Legality</b>	P	P	P	P
<b>Accountability</b>				
- towards government	√	√	√	√
- towards parliament	I	I	I	I
- towards audit bodies	√	√	√	√
<b>Transparency</b>				
- towards government	√	√	√	√
- towards participants	√	√	√	√
- towards the public	I	I	√	I
- toward competitors	√	√	√	√
<b>Participation</b>	I	I	I	I
<b>Fairness</b>	√	√	√	P
<b>Impartiality</b>				
<b>Due process</b>	√	√	√	√
<b>Honesty and incorruptibility</b>	P	P	√	√
<b>Access to grievance procedures</b>	P	P	√	√
<b>Accessibility to services</b>	√	√	√	√
<b>Equal treatment</b>	√	√	√	
<b>Consistency</b>			√	
<b>Human Rights</b>		√		
<b>Privacy</b>	√	P	P	P
<b>Reliability and continuity of Service</b>	√	√	√	
<b>Flexibility</b>		√	√	

<b>Expertise</b>	√	√	√	
<b>Serviceability</b>	√	√	√	
<b>Innovativeness</b>		√	√	
<b>Effectiveness and efficiency</b>	√	√	√	
<b>Representativeness</b>	√	√	√	

√ - Full application

P – Partial application

I – Indirect application

**Legality and Accountability:** One of the most important norms of public service is legality. While private actors are free to do whatever is not prohibited by law, public actors may do only what the law allows them to do. According to the *ultra vires* doctrine of administrative law, a public administrator must positively show that s/he has the substantive legal power to make a decision. While not fully realized in day-to-day practice, this distinction is essential for the legitimacy of the exercise of state power over individuals and the basis for many public service norms.

The application of the norm of legality in all the cases studied is vague. All explicitly require that the contractor comply with the law. For example, in Australia, providers must, in carrying out their obligations, comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory, or local authority. However, it is not clear whether this requirement goes beyond the obligation to comply with the law and applies the *ultra vires* doctrine to contractors. This is especially relevant in Wisconsin and in Israel, where significant discretionary powers are delegated to contractors, such as eligibility determination and sanctioning.

Closely related to legality is the public service value of accountability. Accountability is a complex concept; its broadest meaning can encompass most public service norms (Bovens, Schillemans, and Hart 2008). This paper takes the more narrow meaning of accountability, namely the duty of contractors to justify and explain their actions to their principals. Two aspects of accountability are relevant here: accountability to the parliament and to other external audit bodies (such as the state comptroller) and accountability to the government. At first glance, accountability

towards the government seems to be a new form of accountability, but it is, in fact, a transformation of the *internal* accountability structure within the government. In other words, outsourcing creates a new interface – one between the government and contractors -- and the internal regulations of government (Hood 1999) are transformed to the contractor's duty to report to the government as an external party.

Contractors' accountability to government is realized in three ways. Firstly, as mentioned above, in all cases studied, there is an explicit duty of compliance to the government's policies and procedures. The duty to comply is accompanied by record keeping and reporting requirements, as well as open access of the government to the facilities and documents of the contractor for inspection and monitoring. In Australia, the contract creates a formal accountability forum: “[U]pon DEWR's request the provider must provide ... a suitably qualified, informed and authorized representative ... in order to discuss and accurately answer questions relating to the performance of the Services”. However, the scope and intensity of the reporting and monitoring procedures vary among the countries and states selected.

Secondly, in making certain important decisions, the contractors must get the approval of the governmental department to exercise their authority. For instance, in Wisconsin and Israel, the nomination of a case manager requires the approval of the minister's delegate.

Thirdly, regulations make contractors responsible for the acts of their subcontractors. This is articulated most explicitly in the UK contract which states, “Where the Contractor sub-contracts the delivery of all or any part of the services, the Contractor shall nonetheless remain accountable in all respects to the department for the full and proper delivery of the Services”.

As for accountability to parliament and other audit bodies, while in all locations studied, contractors are subject to audit by external bodies, such as state comptrollers, usually they are not directly answerable to parliament. Yet they are *indirectly* accountable to parliament since the governmental departments themselves, their principals, are accountable to parliament. Therefore, as contractors are accountable to government, they are also, albeit indirectly, accountable to parliament.

**Transparency:** Another public service norm, which is closely related to accountability and legality, is the norm of transparency. In the new results-oriented structures of administration, transparency becomes even more important given that full, accurate, and comparable information is essential for evaluating the achievement of performance goals and promoting competition among providers (Harlow and Rawlings 1997, 147). Since private entities usually enjoy privacy and commercial confidentiality privileges, the nature and scope of the application of the transparency norm on the contractors depends on the specific regulations of a program.

There are four relevant aspects of transparency in the context of welfare-to-work programs. The first is transparency towards government and audit bodies. This is part of the contractors' accountability discussed above. As mentioned, in all the cases studied, significant openness requirements set the basis for inspections by the contracting governmental department and other audit bodies.

The second is transparency toward the participants. In all cases cited here, participants have the right to access documents and files that contain their personal information (with some exceptions that are customary also in the public sector). Moreover, in many instances, contractors are required to actively provide information to participants about their rights and obligations as part of the program.

The third aspect is transparency towards the public at large. In the public sector, the main avenue for such transparency is the application of freedom of information acts, which have become common in recent years. However, in the privatized administration of welfare-to-work programs, contractors are usually not directly subject to these laws. The exception is Wisconsin, where the Open Records Law applies to the contract and the department must make available for inspection and copying any record produced or collected by its contractors *to the same extent* as if the record were maintained by the department. In the other cases, freedom of information laws apply to the contractors only indirectly, through their application to the governmental departments. For example, the UK contract says only that the “contractor acknowledges that the department is subject to the requirements of [Freedom of Information Laws] ... and shall assist and cooperate with the department (at the contractor’s expense) to enable the department to comply with these information disclosure requirements”. These indirect arrangements shed some light on the actions of the contractors, but are more limited than in Wisconsin.

Furthermore, it is important to note that not all the regulations are intended to strengthen the transparency and openness of the contractors and the department. There are also regulations that are intended to strengthen the confidentiality of both parties. The most evident example is the UK, where according to the contract both parties must agree not to disclose confidential information belonging to the other party to any other person without the prior written consent of the other party, except where disclosure is required by law.

The fourth and very interesting aspect of transparency is openness towards competitors. The Wisconsin contract points out that the contractors must cooperate with the other W-2 agencies. In the UK, the contract requires that contractors actively contribute to the sharing and spreading of good practice across Employment Zones; and the code of conduct requires contractors to encourage the sharing of good practice. While this kind of openness and sharing of information about best practices is (or should be) natural within the public sector, it is contrary to basic business logic. As Finn indicates, in the context of the Australian program, contractors tend to see their practices and the operational knowledge as part of their commercial advantage; hence, they may be reluctant to share it, at least in the short term (Finn 2008, 42). This is probably why this requirement, although implicit in government, needs explicit regulations when it comes to private firms.

**Participation:** Although the welfare-to-work programs, especially in Wisconsin and Israel, delegate significant rule-making powers to the contractors, contractors are usually not required to engage in any sort of “notice and comment” procedures or to otherwise promote public participation. Contractors may be subject to the norm of public participation only indirectly, through the public participation requirements of governmental agencies.

**Fairness and Due Process:** Other central public service norms, which are also interconnected, are fairness, impartiality, due process, and access to grievance procedures. In general, the requirement of fairness usually means that official decisions are reached impartially in fact and appearance, and with the proper opportunity for the person affected to be heard. In all countries/states studied, except

Israel, a general norm of acting fairly was applied to the contractors. The manual in Wisconsin specifies that all programs and services be rendered in a fair and just manner; the Australian code of conduct requires treating clients fairly and with respect and acting in good faith; the UK contract states that the contractors must undertake to act fairly and in good faith at all times in connection with the provision of the services. In Israel, there is no general requirement of fairness, but contractors are required to act reasonably in decisions about sanction, and the statute requires contractors to act in good faith. This raises the question of the difference between the public law norm of “fairness” and the private law norm of “good faith.” Generally, these norms seem similar in essence, but the norm of fairness sets a higher standard of conduct. Interestingly, the UK and Australia use both terms simultaneously. This might be an example to the trend toward convergence between these two sets of norms, to which I referred earlier.

Impartiality and due process are closely connected to fairness. However, while the norm of impartiality is rarely mentioned in the regulations of the programs, due process requirements are very common. Due process requirements of notice and reason giving exist in all the cases studied, especially in relation to significant decisions, such as sanctioning and eligibility determination. The reason for the omission of impartiality is not clear; perhaps it is assumed to be part of the general requirement of fairness.

**Access to Grievance Procedures:** Grievance procedures are a common feature of public administration, mainly expressed in the right to appeal a decision to an administrative or judicial tribunal. The comparative examination reveals that all the cases studied the norm of accessibility to grievance procedures was extended to the privatized administration of the programs. However, the countries/states adopted different models of grievance procedures.

In Israel, the participant can appeal any decision of the case manager to an administrative tribunal operated by the state and then appeal to a judicial tribunal. Additionally, the contractor may establish an informal mediation program for resolving disputes. In Wisconsin, there are two levels of review: a fact finding review operated by the contractor and a narrower review by the department. The participant

can also appeal the department's decision in its review to the court.<sup>3</sup> Hence, Israel and in Wisconsin have adopted grievance models that replicate the governmental appeal process.

The UK and Australia have adopted more internal complaint models. In the UK contractors must have their own grievance procedures in place to handle complaints from participants. Records of complaints and grievance and any action taken must be made and retained. In Australia, contractors must establish a complaints process to deal with complaints lodged by participants, potential participants, and employers. Participants or employers who are not satisfied with the results of the complaints process can call the DEWR Customer Service Line for further investigation of the complaint. DEWR's contract also requires the contractor to maintain a complaint registry, and it specifies that the contractor may not withhold a service from a complainant or discriminate against a complainant because of his or her complaint.

The difference between the grievance models can be explained by the fact that in Wisconsin and Israel, the case managers have the power to sanction participants, while in the UK and Australia, they can only recommend such an action and the final decisions are made by civil servants.

**Respect for Human Rights and Privacy:** The obligation to respect human rights has developed in recent decades. But on this matter also there is a significant difference between public and private actors. Although in some instances, private actors are obligated to respect human rights, this requirement is wider and stronger in the case of public agencies. It is interesting to note that only the UK explicitly applies a general norm of respecting human rights. As part of its contractual obligations, the provider is required to comply with the Human Rights Act 1998.

In the other countries/states, the obligation to respect human rights is more specific and derives from the application of specific laws. A central example is the obligation to respect participants' privacy. In all cases studied, contractors are

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<sup>3</sup> The privatized version of the fact-finding review in Wisconsin is exceptional in American programs of welfare-to-work. In most programs, the initial review is by administrative tribunal of the governmental department, as in other state welfare programs (Diller 2000 ; Lens and Vorsanger 2005 ; Metzger 2003 ; Scanlan 1998).

explicitly required to keep sensitive information about the participants confidential, and to take all steps required to prevent the unauthorized disclosure of such sensitive information. Usually this is done by applying the general privacy laws. Since as part of the operation of the welfare-to-work programs, the contractors receive and have access to sensitive information, the scope of confidentiality requirements on part of the contractor becomes more extensive. However, only in Australia are contractors explicitly required to carry out the obligations contained in the privacy laws as if they were a governmental agency; they are also subject to audits by the Australian Privacy Commissioner.

**Equal Treatment and Consistency:** A public service norm with a significant human rights aspects is the provision of equal treatment to participants. This encompasses the obligation not to unlawfully discriminate on the grounds of gender, race, national or ethnic origin, marital status, sexual preference, disability, religion, etc., and the obligation to use general policies and apply them fairly, consistently, and without arbitrariness to all participants. All countries, except Israel, emphasize the non-discrimination requirements and apply different sorts of anti-discrimination laws. Special attention is given to this in Wisconsin, where studies have exposed practices of discriminatory sanctioning on the basis of race and ethnicity and where faith-based organizations are significantly involved in the operation of programs. But since programs are federally funded, as sub-recipients, contractors are required to comply with the federal affirmative action and equal opportunity policies and ensure equal access to services as the DWD.

At the same time, in all places studied, the value of consistency is seldom mentioned, arguably because of the strong philosophy of flexibility in these programs' management, which I will discuss below.

**Accessibility of the Services:** Accessibility touches on a fundamental difference between public and private provision of services. In general, private markets are based on the commodification of services and the ability to exclusively sell them to those willing and able to pay. Yet public services are generally rendered universally, or according to criteria that are not based on the willingness or the capacity of the

“client” to pay. The contracting out of the welfare-to-work services privatizes the operation of the programs, but not their funding, which remains public. Accordingly, all countries/states in the study inserted provisions that obligated contractors to serve all eligible applicants. The law in Wisconsin and the contract in Australia explicitly specify that the contractor cannot demand payment either directly or indirectly from a participant for, or in connection with, the services. This emphasis on the contractors' duty to accept all participants is based also on the concern that contractors will try to serve only the clients most likely to succeed (“creaming”). Moreover, in Australia a requirement of a “minimum service guarantee” was created because of the tendency of contractors to withhold services from the harder to serve clients (“parking”)(See, e.g., Considine 2001).

The regulations of the programs handle additional dimensions of accessibility to the program, such as physical, linguistic, and cultural accessibility. The federal civil rights obligations of the Wisconsin DWD require W-2 agencies to insure that services are equally available to everyone by providing equal access to all programs; to assure physical access to the facilities to persons with disabilities; to provide translators and sign language interpreters to assist applicants and clients with hearing impairments or with limited ability to read, speak, or understand English; to provide literature, post information, and offer audio-visual materials in various languages; and to provide readers for persons with visual impairments. Moreover, as mentioned above, governments usually require contractors to actively inform participants as to their rights and duties. These requirements are most prominent in the intake stages and may be essential for participants' ability to access all program services (and avoid sanctions or disenfranchisement of services).

**Incorruptibility and Honesty:** The analysis of the application of the incorruptibility norm to contractors indicates two different approaches. The first approach, adopted by Wisconsin and Israel, applies the norm to the contractors' employees as they are civil servants. In Wisconsin, the enabling statute determines that whoever receives remuneration in return for referring an individual to a person for the furnishing of any item or service or for purchasing any goods or services for which payment is required is guilty of a felony. In Israel the law goes even further; it subjects the contractors' employees to *all* the penal code provisions that apply to civil servants.

The second approach, adopted by Australia and the UK, applies the norms through the general anti-fraud standards, but with a higher standard of conduct. For example, in the UK, contractors are required to take active steps to prevent fraud, including criminal or civil fraud by the contractors' directors, employees, or sub-contractors. Hence, the application of the norms of integrity and honesty is through general – civil and penal – anti-fraud laws that apply to any private actor dealing with the government. However, the standard of application is slightly higher, since contractors are required also to take active steps to prevent fraud.

These two approaches may differ in practice. It is not clear, for example, whether in the second approach bribery of a case manager is considered a fraud by the contractor against the government. But more importantly, they differ conceptually. While the first sees the contractors and their employees rooted in the public sphere, subject to the distinctive incorruptible norms of public servants, the second sees them as external private actors who happen to do business with the government or only “help” the government, and who, therefore, are subject only to the general norms of incorruptibility.

**Flexibility and Expertise:** Flexibility was seen as a managerial principle also in the public sector (Stewart 1975), but this norm has been eroded over time (Bovens et al. 2008). Flexibility is a central norm in the New Public Management “post-bureaucratic” era. For example, Wisconsin’s W-2 manual stresses that the goal of the DWD is to allow as much flexibility as possible to W-2 agencies. In the UK the contract emphasizes that Employment Zones have a high degree of flexibility in deciding how to increase the numbers of job seekers who achieve sustainable employment.

Interestingly, the norm of flexibility is frequently linked to the norm of expertise. The UK contract states that by “using appropriate experienced, qualified and trained personnel ... the contractor shall be free to implement in the Employment Zone such arrangements and strategies as it considers appropriate.” However, it is not clear what is meant by relevant expertise. While in the past, welfare service required social work or legal-bureaucratic expertise (Brodkin 2007 ; Diller 2000), it seems that today the main requisite is efficient management (Turner 2008).

**“Post-bureaucratic” Norms:** Surprisingly, other “post-bureaucratic” norms – such as efficiency, effectiveness, innovativeness, and serviceability – lack prominence in programs regulations. One exception is a clause in the W-2 manual which asserts that “W-2 goals are best achieved by working with providers, who are committed to customer-friendly service, who partner with employers and other service providers, who are innovative, and who strive to continuously improve the provision of service”. The explanation might be that, as stated in the W-2 manual, governments assume that once they outsource their service to private (especially for-profit) entities on the basis of performance-based contracts, contractors will adhere to post-bureaucratic norms, and, therefore, there is no need to emphasize them.

Nevertheless, a post-bureaucratic norm not assumed in the new model is “client choice.” In Wisconsin and Israel, participants cannot choose their provider, while in the UK and Australia, there is sometimes a choice, but it is limited.

**Reliability and Continuity of Service:** It is interesting to note that program regulations stress the importance of the reliability and continuity of services (not usually mentioned in traditional lists of public service values). For example, the UK contract specifies that the contractors acknowledge that the continuity of services for participants is of paramount importance, and that they undertake to use all reasonable endeavors to facilitate such continuity. Moreover, both the UK and Australia refer to a transition-out period and oblige the contractor to provide sufficient assistance and cooperation with the department and the incoming provider to ensure an orderly and efficient transition. In Wisconsin, the contractors must immediately notify the department if they are unable to provide the services specified under the contract for the department to replace the contractor in a timely fashion.

**Representativeness:** The complex nature of the agency relationships between the government and the contractors is revealed in the Australian regulations that introduce the norm of representativeness (this norm also is uncommon in the traditional lists of public service norms). On the one hand, the Australian contract emphasizes that the contractors' employees are not DEWR's employees and should not represent

themselves as such. At the same time, the Australian government is aware that the contractors are frequently perceived as part of the government, and thus, their acts might reflect badly on the government. Therefore, the contract and the code of conduct specify that contractors must uphold the good reputation of the services and programs; they must not act in such a way as to bring the Commonwealth or the services into disrepute. A similar concern is addressed in Wisconsin, where the contract prohibits any use of the State of Wisconsin by contractors for commercial promotion.

## DISCUSSION AND CONCLUSIONS

In all the cases studied, legislative and administrative regulations play a significant role in extending public service norms into privatized welfare-to-work. In all cases, most public service norms are extended – at least to some extent – to the contractors. As a result they are accountable to a wider array of stakeholders than are regular private actors; and they are subject to new requirements – such as equal access to services, due process and fairness – that are uncommon or significantly weaker and vaguer in the private sphere.

However, some of the core values of public service – such as accountability, transparency and participation – are applied to the contractors only indirectly. As for the norm of accountability, while accountability to government and to other external audit bodies is applied directly, accountability to parliament is not applied directly to the contractors, and they may be accountable to parliament only through the governmental agency's accountability procedures. Also, in most countries/states, freedom of information acts are not directly applied to the contractors, and information about the contractors may be retrieved only through information requests from the government. Similarly, the norm of public participation is not applied directly to the contractors but indirectly through the public participation procedures of the governmental agency. The indirect application of the public service norms in all these examples might be meaningful, but differs from their direct and full application.

Moreover, the public service norms are often not applied to their full extent. The findings show that the public service norms are applied at three different levels. Only at the highest level are public service norms applied to contractors as if they

were public agencies. At an intermediate level, the public service norms are applied to contractors as private actors who are required to demonstrate a higher standard of conduct. And at the lowest level, the public service norms are applied to the contractors through regular private law provisions as is the case with any other private party.

In their extension to private parties, public norms often undergo significant changes. Two central transformations can be identified. First, there is a transformation in the meaning of the norms. Sometimes when a public norm is extended to the private contractor, its meaning is adjusted to suit the new institutional structure and logic. A good example is the change to accountability. The new structure and the separation between government and contractor require a transformation of government's internal control systems to an external system of accountability. This creates a new version of accountability – "accountability to the government".

A second transformation is in the weighting of some norms and the balance between norms. Previously, some aspects of the traditional model of administration were obvious or implied; now, in the new privatized model of administration, they must be emphasized and made explicit, given the different logic of public and private modes of administration. This change is demonstrated by the strong emphasis on the norms of continuity and reliability in all countries/states studied. While these are by no means new norms, they do not usually appear in lists of public service values. In the traditional public structure, these norms were obvious due to the institutional and stable structure of the public sector. However, since private contractor risk bankruptcy and funding instability or may prefer better business opportunities, the risk of interruption in services becomes much more visible, and continuity and reliability become more important. Similarly, some "post bureaucratic" norms that need to be emphasized in public administrations are obvious and assumed in privatized administrations. Therefore, the fact that values like efficiency and serviceability are not prominent in program regulations is not surprising.

But sometimes the extension of public service norms lacks clarity. The most prominent example is the norm of legality. Although this is one of the pillars of the application of public service norms to private contractors, whether the *ultra vires* doctrine applies to the contractors is vague in all the studied cases.

Moreover, the extension of public service norms is often inconsistent. Sometimes, contractors are treated as public agents; other times, as private ones. There are inconsistencies in the level of application of norms among states/countries. The levels of application of integrity and incorruptibility and of access to grievance procedures are different between Israel and Wisconsin, on the one hand, and Australia and the UK on the other hand. These differences can sometimes be explained by the different levels of powers and discretion delegated to the contractors in those programs. But differences exist between these programs – such as in the application of transparency and fairness norms – that cannot be explained in such a manner. Additionally, there are inconsistencies in the level of application of norms even within countries. For example, in Israel, grievance procedures and the application of penal provisions follows the higher standards of civil servants, while the application of norms of transparency, human rights, and discrimination are at a lower level.

The partial and indirect application of public service does not necessarily indicate a problem. It may reflect a transformation in public law and a positive shift from rigid labeling and "one package" concepts to a more flexible approach to the application of public norms. The case studies also indicate the emergence of legislative and administrative regulations as central tool for the application of public service norms to private contractors. This is an interesting development in public law, which traditionally developed through judicial review by the courts.

However, it seems that the lack of clarity and the inconsistencies in the application of public service norms to contractors reflects the fact that these developments are done with conceptual ambiguity. The examination of the various patterns in which public service norms are applied to private contractors does not reveal a coherent theory or concept that can explain the differences in which norms are extended, how and to what extent. Although there is a clear movement towards extending public service norms to private welfare-to-work contractors, it seems that the conceptual question concerning when and to what extent we will see private contractors as public entities remains unanswered. We must continue to seek the answer, as it is important to our fundamental understanding of governance, rule of law, and the exercise of power and discretion in the new forms of privatized public administrations.

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