

Governance, Family, and Citizenship
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What does the experience of a citizen look like when a government contracts out public work to private parties to administer welfare, health care, education, prisons, the military?

Clearly there are threats to regulation and accountability of these private parties. If private parties are doing the work of government, those parties need to be accountable to public norms. The state action doctrine does not apply to private actors and private actors might evade statutory imperatives, so they can escape public regulation.¹

Particular problems arise in multinational trade and online shopping, in which the enforcement of contracts is tenuous.² Resources need to be utilized in government agencies, legislative oversight, judicial review, insurance companies, lawyers, non-governmental organizations, trade associations, media and consumers to consider the rules for regulation, standards to measure compliance with those rules, and sanctions for failure to comply.³

¹ Gillian Metzger, "Privatization as Delegation," *Columbia Law Review* (103): 1367-1502.

² Filippa Corneliussen, "The Impact of Regulation on Forms: A Case Study of the Biotech Industry," *Law and Policy* 27 (July 2005): 429-449; Henry Rothstein, "Escaping the Regulatory Net: Why Regulatory Reform can Fail Consumers," *Law and Policy* 27 (October 2005): 520-547; Colin Scott, "Regulatory Innovation and the Online Consumer," *Law and Policy* 26 (July and October 2004): 477-506.

³ John Braithwaite, Cary Coglianese, David Levi-Faur, "Can Regulation and Governance Make a Difference?" *Regulation and Governance* 1 (2007): 1-7; Peter May, "Regulatory Regimes and Accountability," *Regulation and Governance* 1 (2007): 8-26; Tetty Havinga, "Private Regulation of Food Safety by Supermarkets," *Law & Policy* 28 (October 2006): 515-33.

Under these arrangements, space for civic participation is curtailed. Unless the citizen becomes involved in a non-profit organization committed to regulation, then the primary space for citizen involvement is as consumer. While consumer practices can shape corporate behavior, Martha Minow fears that public values will be undermined. Public accountability becomes measured in market logic rather than serving as a legitimate principle on its own, and civic engagement may decline as spaces for common ventures are narrowed.⁴

In the midst of these concerns about privatization, there are also opportunities for new forms of regulation. Privatization can be flipped around to become “publicization;” deregulation can be grounds for “reregulation.”⁵ These new forms of regulation will affect citizens in new ways. Patricia Strach and I borrow from the field of Public Administration to employ a lens of governance to recognize the relations between government and private groups, the networks they sustain, the authority government still employs, and the public functions of private groups.

In political science, governance was widely used in the early 20th century to describe the governing arrangements of many societies, and it continues to be used to speak generally of the work that governments do.⁶ Lester Salamon explains, “instead of

⁴ Martha Minow, “Public and Private Partnerships: Accounting for the New Religion,” *Harvard Law Review* 116 (2002-2003): 1229-1270.

⁵ Jody Freeman, “Extending Public Law Norms through Privatization,” *Harvard Law Review* (2002-2003): 1295-1352; Laura Dickinson, “Public Law Values in a Privatized World,” University of Connecticut School of Law Articles and Working Papers (2006) Paper 68; Laura Dickinson, “Government for Hire: Privatizing Foreign Affairs and the Problem of Accountability under International Law,” University of Connecticut School of Law Articles and Working Papers (2005) Paper 53.

⁶ Robert M.C. Littler, *The Governance of Hawaii* (Palo Alto: Stanford University Press, 1929), Charles E. T. Stuart-Linton, *The Problem of Empire Governance* (London:

the centralized hierarchical agencies delivering standardized services that is caricatured in much of the current reform literature and most of our political rhetoric, what exists in most spheres of policy is a dense mosaic of policy tools, many of them placing public agencies in complex, interdependent relationships with a host of third-party providers”.⁷ Lynn et al. define governance broadly as “regimes of laws, administrative rules, judicial rulings, and practices that constrain, prescribe, and enable government activity, where such activity is broadly defined as the production and delivery of publicly supported goods and services”.⁸

Governance that examines relationships also illuminates rather than hides questions of power. We can see more clearly how governments accomplish their goals and what the consequences are for relying on different actors. Our definition also includes a much broader range of institutions than just public-private partnerships and

Longmans Green and Company, 1912); David Easton, *The Political System, an Inquiry into the State of Political Science* (New York: Knopf, 1953), Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in *Bringing the State Back In*, ed. Peter B Evans, Dietrich Rueschemeyer, and Theda Skocpol (New York: Cambridge University Press, 1985); Gerald Garvey, *Facing the Bureaucracy: Living and Dying in a Public Agency* (San Francisco: Jossey-Bass, 1993), Donald F. Kettl, *Sharing Power: Public Governance and Private Markets* (Washington, D.C.: Brookings Institution, 1993), Laurence E. Lynn, Carolyn J. Heinrich, and Carolyn J. Hill, *Improving Governance: A New Logic for Empirical Research* (Washington, D.C.: Georgetown University Press, 2001), James G. March and Johan P. Olsen, *Democratic Governance* (New York: Free Press, 1995), Lester M Salamon, "The New Governance and the Tools of Public Action: An Introduction," in *The Tools of Government: A Guide to New Governance*, ed. Lester M Salamon (New York: Oxford University Press, 2002), Lester M Salamon, "Rethinking Public Management: Third-Party Government and the Changing Forms of Government Action," *Public Policy* 29, no. 3 (1981).

⁷ Salamon, "The New Governance and the Tools of Public Action: An Introduction," 3.

⁸ Laurence E. Lynn, Carolyn J. Heinrich, and Carolyn J. Hill, "Studying Governance and Public Management: Challenges and Prospects," *Journal of Public Administration Research and Theory* 10, no. 2 (2000): 235.

non-profits. Any institution could potentially have a relationship to the state in any particular policy area. Thus, governance can be defined as a lens to analyze resources on which governments rely to carry out policy objectives, where resources are defined by the work that they do to meet policy objectives rather than by a pre-defined relationship to government. As such, public-private partnerships are not about public power unleashed into the private sphere but about the government making use of resources in the private sphere. When citizens are used as a resource, then governance becomes an important feature of citizenship.

Historical scholarship is looking beyond the usual state actors and state bureaucracies. In re-thinking the welfare state, historians show how non-state actors play fundamental roles. Welfare provision was, historically, an endeavor of local governments and the private sector, with mutual benefits and obligations accorded to each.⁹ Between the 1870s and 1930s, corporations stepped in to provide a wide array of benefits to their workers as an innovative way to fend off unions.¹⁰ Welfare capitalism was particularly effective as corporations developed their own complex managerial bureaucracies, which they could put into service to provide large personnel departments,

⁹ Michael Katz and Christoph Sachsse, *The Mixed Economy of Social Welfare* (Baden-Baden: Nomos, 1996; Mimi Abramovitz, *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present* (Boston: MA: South End Press, 1988), Berkowitz and Mcquaid, "Businessman and Bureaucrat: The Evolution of the American Social Welfare System, 1900-1940," Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917-1942* (Ithaca: Cornell University Press, 1995).

¹⁰ Jennifer Klein, *For All These Right: Business, Labor, and the Shaping of America's Public-Private Welfare State* (Princeton: Princeton University Press, 2003); Beth Stevens, "Blurring the Boundaries: How the Federal Government Has Influenced Welfare Benefits in the Private Sector," in *The Politics of Social Policy in the United States*, ed. Margaret Weir, Ann Shola Orloff, and Theda Skocpol (Princeton: Princeton University Press, 1988).

offer purchase of company stock, present safety programs, offer group insurance plans and retirement pensions. In the development of railroad policy in the U.S, local and state governments invested in private development for public purpose. Lacking the administrative capacity to coordinate the railroad industry, state and local governments provided “massive aid” to railroad corporations in order to attract railroads to their regions.¹¹ Political scientists, too, have examined the numerous institutions on which government relies. They have looked to history for a broader study of what these other actors tell us about how the state operates. Christopher Howard unearthed job training and welfare assistance in tax credits and deductions that make up the “hidden” welfare state. Jacob Hacker and Marie Gottschalk shed light on the role of employer-provided healthcare in taking care of Americans in the “private” and “subterranean” welfare state. Kimberly Johnson and Paul Manna have shown the state’s reliance on other levels of the federal system to carry out public policy.¹² The administrative state is not merely a political actor, or more accurately, the *only* political actor in American policy provision.

These studies demonstrate not a history of privatization but of a relation between the public and private. To relate public-private networks to citizenship, however, we must look for power in the social relations government defines and maintains and how those social relations shape citizen identity. Ruth O’Brien locates power in relations in the workplace, where the apparent benign environment of the postindustrial workplace masks mechanisms of control.¹³ In O’Brien’s view, power is exercised in relations, and

¹¹ Frank Dobbin, *Forging Industrial Policy: The United States, Britain, and France in the Railway Age* (New York: Cambridge University Press, 1997).

¹² {Manna, 2003 #201 }

¹³ Ruth O'Brien, *Bodies in Revolt: Gender, Disability, and a Workplace Ethic of Care* (New York: Routledge, 2005), 93-102.

freedom is found by renegotiating the terms of those relations and breaking the direction of rules and surveillance.¹⁴ The disabled subject can bring his or her knowledge of the nonstandard to make a claim to negotiate and to unseat standard practices.¹⁵ Gretchen Ritter extends the analysis to a study of gender and citizenship, thinking of the ways in which the political subject can make a claim to embodied citizenship.¹⁶

These studies in APD make use of Foucault's theory of biopower and draw out the ways that citizens' bodies are already recognized, utilized and regulated in social and political life. Our study draws upon Foucault's work on governmentality, to attend to the institutions that maintain those relations, so that we may draw those lines of government networks and appreciate their significance on citizens' lives (and bodies). Foucault's concept of governmentality invites observation of the relation between the state, relations, and the citizen.

Foucault explained governmentality as the paternal management of individual, goods and wealth of the household reproduced in management of the state.¹⁷ The population takes on a complicated relationship with government, sitting as both a subject of needs and an object, unaware of the ways in which government power is acting upon

¹⁴ Ruth O'Brien, *Crippled Justice: The History of Modern Disability Policy in the Workplace* (Chicago: University of Chicago Press, 2001).

¹⁵ *Ibid.*, 112.

¹⁶ Ritter, *The Constitution as Social Design: Gender and Civic Membership in the American Constitutional Order*, 310-12.

¹⁷ Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 92.

it.¹⁸ The mechanisms of discipline seep through relations so that government objectives can be accomplished without explicit demonstration of government power or a feeling of coercion on the part of the citizen.¹⁹ Like the participants in new governance literature, Foucault is attentive to the processes of government, adding the recognition of power and shaping of individuals within the processes.

Similarly, Foucault sees governmentality occurring not only in state agencies and organizations but also in a host of other relations, paying special attention to the development of the family in the development of state power. Feminist theorists have long maintained that citizenship is affected by gendered roles in the family²⁰ and our own work has examined in depth the role of family in American governance.²¹ Foucault extends the study of the family to observe what the family is used as an instrument for in modern states. Information that needs to be gained about citizens by the government or to citizens from the government can be transmitted through the family. The family can inculcate appropriate sexual behaviors, implement demographic shifts, maintain consumption patterns, and fulfill other goals of the state and economy.²²

¹⁸ Ibid., 100.

¹⁹ Foucault, Michel, *Discipline and Punish: The Birth of the Prison*, tr. A. Sheridan (New York: Vintage, 1995).

²⁰ Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988).

²¹ Patricia Strach, *All in the Family: The Private Roots of American Public Policy* (Palo Alto: Stanford University Press, 2007), Kathleen Sullivan, *Constitutional Context: Women and Rights Discourse in Nineteenth-Century America* (Baltimore: Johns Hopkins University Press, 2007).

²² Foucault, "Governmentality," 20.

The family, however, is not a fixed status. It has to be constructed, and it is capable of being further classified to distinguish different kinds of families. Jacques Donzelot's study of the policing of families begins from the understanding of the family "not as a point of departure, as a manifest reality, but as a moving resultant."²³ Through practices of collection and segregation of citizens and families, the state could act through the family. Upper-class families were restructured for the purposes of protecting children. With domestic servants seen as a source of pathology among wealthy children, mothers could reclaim their role by following the advice of doctors. The resulting practice was one in which "the doctor prescribes, the mother executes."²⁴ Through such practices, the upper-class family set itself apart as autonomous, while the mother could claim her own authority within the family and skirt its patriarchal authority.²⁵ Working-class families, meanwhile, were cast as perpetually in struggle against the vices of the streets. Members were pitted against one another, to exercise surveillance upon one another. For those who were castaways of the family, classed as vagabonds, the police were available to exercise authority upon the "family's rebels."²⁶ In recovering the construction of citizenship in the governing through family, Donzelot was careful not to overstate the instrumentality of the state. The construction takes place through regulations that do not necessarily begin with the state. The institutions are not blatant

²³ Jacques Donzelot, *The Policing of Families* (Baltimore: Johns Hopkins University Press, 1977), xxv.

²⁴ *Ibid.*, 18.

²⁵ *Ibid.*, 45.

²⁶ *Ibid.*, 24.

institutions of coercion, evidenced by the ongoing choice to maintain the family relation. Foucault and Donzelot help us to see that we can make sense of power within governance by looking beyond those actors and institutions we define as governmental.

To illustrate, Strach and I locate the construction of citizenship in policy development. In their anticipation of obesity policy, Rogan Kersh and James Morone acknowledge the role of non-governmental actors in the politicization of the issue in cataloging the “seven triggers to action” that turn a seemingly private issue into one that warrants government intervention into seemingly private behaviors. The various professional and civil associations that generate social disapproval, combined with findings from medical experts and attempts at self-help in the first three triggers all involve non-governmental actors. Citizenship categories are constructed as these groups go on to label “the demon user” and “the demon industry” in the next two triggers. Finally, interest groups ramp up the pressure until government intervenes and federal policy is instituted.²⁷

In this account, Kersh and Morone bring networks into the central telling of the story of the rise of various threats to safety that have gripped the American imagination. Their perspective, however, runs one way, from non-governmental actors to government. The endpoint of their study is the development of government regulatory strategies—controlling the conditions of sale, raising prices through sin taxes, litigating against producers, regulating marketing and advertising, and conducting education campaigns.²⁸ A lens of governance makes it clear, however, that there are other sites of relation

²⁷ Rogan Kersh and James Monroe, "How the Personal Becomes Political: Prohibitions, Public Obesity, and Health," *Studies in American Political Development* 16 (2002).

²⁸ *Ibid.*: 172.

between the federal government and non-governmental actors in the generation and implementation of policy. Subsidies, e.g., are key in encouraging some industries (such as high fructose corn syrup) that can offer lower priced products and contribute to obesity patterns. Medical associations can work through pediatricians to advise parents about family nutrition practices. Schools can be enlisted to run programs akin to “Just say no” programs, replete with looming authority figure. In these alternative sites, government cedes bureaucratic control to some other institution—professional association, schools, families, etc.—that works in networks and relations to affect policy.

While Kersh and Morone await federal regulation on obesity, the processes of citizen construction are already underway. There is evidence that the categorization of citizens and the rise of experts has already been generated by the various entry of different groups—health, medical, consumer, environmental, family—into the public concern over obesity. The very groups that are *agents* in advancing federal obesity policy are simultaneously *objects* of citizen construction. The health expert emerges as the authoritative figure. The mother at home dispensing snacks stands in relation to this doctor/expert, ceding her authority to become a medium for the doctor’s authority. If federal regulatory policy does take place, it will only target those who did not comply in the transitioning social relations at this current stage. They then become objects of formal regulation should a federal obesity policy develop. The wholesome breadmaking mothers, meanwhile, will then appear to be autonomous, while their own position in a relation of regulation will likewise go unnoticed.

Once formal policy is enacted, the act of categorization will take place along the lines of good/bad mother, or reliable/unreliable childcare center, healthy/unhealthy

schools, etc. These lines have been forming as the seven triggers to action have been fired. Governance shows that federal regulation rests not on the failure of parents but on the inability of social modes of regulation in the development phase to capture all parents. The holdouts are the “casualties” of the regulatory system²⁹ while the good mother/care provider/school official triumvirate will emerge to join the ranks of the yeoman farmer, freedman, industrial worker, victim, as the most recent reiteration of the “idealized citizen.”³⁰

While Kersh and Morone are occupied with the events that make the personal become political, the political becomes personal when seen through the lens of governance. Researchers need not wait until there is a bureaucratic arrangement in place to locate the effect upon the citizen. Kersh and Morone end by suggesting that federal policy ought to emphasize treatment and education rather than criminalization, which would be too harsh.³¹ Yet if we understand that any regulatory regime, even a benign one, imposes rules upon the citizen, we can identify ongoing citizen construction even in the more gentle policies of public health.

As legal and constitutional questions continue to arise over outsourcing, the relational aspects of governance should be kept in mind. Efforts to regulate the private sphere should include awareness of the effects of regulation upon citizens when citizens are enlisted to play a role in public work.

²⁹ Donzelot, *The Policing of Families*.

³⁰ Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford, 2007), 77.

³¹ Kersh and Monroe, "How the Personal Becomes Political: Prohibitions, Public Obesity, and Health," 175.