Preface

Delegation of governmental power to private parties has become a commonplace method of national and international governance. Private actors—companies, charities, and associations—are increasingly entrusted with the exercise of core governmental power, the performance of important governmental functions, and the provision of essential public services. This use of private actors in governance is no longer championed only by liberal or right-wing governments, but is so prevalent that it can now be considered to have transcended political and ideological divides. Yet making private delegation work is not straightforward. Achieving efficiency and effectiveness requires thoughtful attention; likewise, ensuring that private delegation does not undermine democratic participation, accountability, and human rights. In recent years, government contractors, citizens and courts have grappled with the challenges created by privatized governance.

Through comparative study of legal controls of private delegation in England, the European Union, and the United States, this book considers the ways in which law responds to the phenomenon of private delegation. The study is wide-reaching and controls are categorized in a twofold way, according to whether they govern delegation or whether they govern the private parties to which governmental power has been delegated. The study is also timely, given that delegation of governmental power to private parties continues apace and given that the issues raised by such delegation become ever more visible. In England, for instance, the impact of governmental outsourcing on human rights has been the subject of no fewer than two reports of the Joint Committee on Human Rights in the last three years and was at issue in the recent House of Lords case, YL v Birmingham City Council.

Both the responses of the three legal systems to private delegation and the interaction between the different types of legal control are assessed here; and I have endeavoured to state the law as of 30 May 2007, although where possible, subsequent developments, such as the YL case, have been incorporated. It will be seen that within all three legal systems there is significant potential for law to respond meaningfully to delegation of governmental power to private parties, in a way which promotes accountability, democracy, and human rights, without neglecting efficiency and effectiveness. Yet much work is to be done if this potential is to be realized, and this book highlights possibilities which merit attention moving forward.

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Catherine Donnelly
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