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Excerpt
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1 Introduction

Public contracting accounts for almost a third of government expenditure within the OECD, amounting to about 13 per cent of GDP on average (OECD, 2021). Contracts underpin the delivery of health, education, and general public services, which combined account for over two-thirds of public procurement spending (OECD, 2021). Globally, the value of public contracts is estimated at over $13 trillion annually, exclusive of public procurement during the Covid-19 crisis (Hunt, 2020; Makgill, Yeung and Marchessault, 2020).

In countries the world over, governments have transitioned away from directly providing public services to contracting and collaborating with third parties to deliver services on their behalf. Dense, multilevel, and cross-sectoral governance networks typify public service provision in places like the US and the UK (Koliba et al., 2019), a reality that scholars have variously referred to as the 'hollow' state, the 'contracting' state, the 'enabling' state, and a 'state of agents' (Hood, 1995; Kirkpatrick and Lucio, 1996; Milward, 1996; Milward and Provan, 2000; Heinrich, Lynn and Milward, 2010; Sainsbury, 2013). Sometimes, these arrangements are highly formalised – as in public–private partnerships. Other times, they are amalgamations of bilateral agreements with little planned interconnectivity.

While public contracts have long played a major role in industrial development, including innovations in flight and the internet (Nagle, 1999, 2012), the ascent of privatisation and shift away from direct bureaucratic provision starting in the 1980s has been hotly debated amongst academics, public managers, the public, and politicians alike. Involving private and nonprofit actors in the business of government means delegating discretion and authority away from the state, forcing ideological and normative argumentation about which activities are inherently governmental and which can be reasonably delivered via the market.

Economists often argue that government involvement is meant to correct for market failures like externalities and collective goods (Lazzarini, 2022). Using regulations, rewards, and sanctions, governments can curtail bad behaviours – like pollution – and promote good ones – like fair labour practices. Likewise, through taxation, governments can produce an adequate supply of collective goods like national parks or national defence, which if left to market provision would be in short supply due to low-paid demand (Lazzarini, 2022).

Governments, however, are not without their limitations. In delivering collective goods deemed worthwhile by a majority, governments can struggle to provide support to the minority. The somewhat adversarial nature of electoral democracy likewise means that members of the public face significant hurdles when challenging poor public performance. Government-monopolised public service provision lacks competitive pressure and direct performance indicators, creating concern that states are structurally disposed to expand provision and inflate costs, running counter to public interest as defined by measures of efficiency (Wolf, 1979; Grand, 1991; Weber, 2014).

Given the options – the inefficiencies of government or the inequalities of the market – practitioners and academics alike have sought an ideal counterpoise: harnessing the ruthless efficiency of the private sector while enhancing public value considerations of quality, equity, reviewability, and accountability. As the preferred tool of privatisation, the design of public contracts has been a critical mechanism through which states have tried to achieve such a balance (Van Slyke, 2003).

As predicted by Le Grand, the result of government-subsidised intervention through contracts has been mixed (1991). While early rhetoric regarding contracting out was alarmist (Salamon, 1989), later research focused more so on conceptual clarification and executing 'empirical tests of the implications of changing governance configurations against various criteria, including equity in access to public goods and services, responsiveness to "customers" (formerly "clients" or "patients"), accountability to elected officials and organized stakeholders, efficiency in service provision, and effectiveness in producing outcomes and results' (Heinrich, Lynn and Milward, 2010, p. i4).

A 2018 systematic review of the economic and quality effects of contracting out showed that the cost savings associated with outsourcing have decreased over time, are greater for technical services (e.g., waste collection, building maintenance, water services, public transit) than for social services (e.g., mental health, nursing homes, employment support, children's residential care), and have been twice as large in 'Anglo-Saxon' countries as compared to those with higher bargaining coverage. The review also highlighted a concerning lack of information on the effects of contracting out on service quality and limited use of measures of transaction costs, making it difficult to assess the influence of outsourcing on the overall cost-effectiveness of service delivery (Petersen, Hjelmar and Vrangbæk, 2018). Combined, the findings suggest that 'generalization of effects from contracting out should be made with caution and are likely to depend, among other things, on the transaction cost characteristics of the service, the market situation, and the institutional/regulatory setting' (Petersen, Hjelmar and Vrangbæk, 2018, p. 130). Other research shows that the decision to contract out can be influenced by ideology, suggesting that social services more so than technical ones 'are the contemporary ideological battlefield of privatization' (Petersen, Houlberg and Christensen, 2015, p. 560).

This Element is an exploration of public contracting mostly in health and social services, representing an authoritative, but not exhaustive, review of relevant public administration, public procurement, and public policy literature from the UK and the US. In it, we situate public contracting as a meso- and micro-level element of macro-level public governance paradigms, building theory and advancing a cross-disciplinary understanding about how the specification of contracts through procurement strengthens or weakens links between policy design and implementation (Howlett, Ramesh and Capano, 2022, 2023). We also underscore the oft overlooked role of public procurement as a strategic function of government, charged with designing and managing contracts in pursuit of wider policy objectives while upholding fundamental values rooted in public law: transparency, accountability, equal treatment, due process, and fair competition.

It is our contention that public procurement operationalises policy goals and objectives through the delegation of authority, the specification of incentives and monitoring, and the articulation of governance mechanisms within contracts, enabling organisations from across sectors to advance the public interest. To illustrate the argument, we explore opportunities, complexities, and tensions in outcomes-based contracting (OBC), a novel approach to public service contracting which ties payment to the achievement of social outcomes and advances 'increased and sometimes novel inter-sectoral relationships between governments, nonprofits, and for-profit organisations' (FitzGerald et al., 2023a, p. 329).

In Section 2, we trace the macro-level evolution of public contracting across public governance paradigms. We describe the history and process of privatisation via contracting, from the bureaucracies of Traditional Public Administration to the reforms of New Public Management and the advent of New Public Governance. We reflect the collaborative turn in contemporary public management which emphasises relational over technical mechanisms to govern the cross-sectoral networks that interdependently deliver health and social services today. The section then tracks changes in approaches to public contracting over time, charting shifts in the specification of incentives and monitoring from efficiency-seeking bipartite fee-for-service contracts to contemporary multilateral outcomes-based contracts ambitiously designed to facilitate collective action and improve public service performance.

In Section 3, we turn to the role of public procurement professionals and their influence on the design, award, and management of public contracts. This section describes procurement professionals as specialised public managers operating in rules-based environments. We distil three layers of rules within which procurement professionals operate: overarching principles; links to wider economic, social, and environmental policies; and rules directly related to contract performance. The section details the growing discretion and responsibility given to procurement professionals to design and manage public contracts that are explicitly linked to wider policy objectives – for example sustainability targets, social equity considerations, and specified social outcomes. We further note that public contracts have traditionally hinged upon management of inputs, activities, and outputs presumed to lead to outcomes and that tensions can arise in OBC when the role of government is limited to approving a fixed payment for their achievement.

Section 4 addresses OBC more directly and details the ways in which outcomes are specified in contracts. In addition to reviewing the evidence on OBC, we frame outcomes-based contracts as tools which determine micro-dimensions of policies – their specifications or ‘on the ground requirements’ and calibrations or ‘ways of delivery’ (Howlett, Ramesh and Capano, 2023). Detailing contractual specifications in light of the policy goals which illuminate them thickens contemporary decompositional approaches to policy studies and forces scholars to consider not just whether a service should be contracted out but also *how* it has been contracted out. We explore these nuances in the design of two Outcomes Funds, an increasingly popular policy approach to supporting multiple and simultaneous outcomes-based contracts. Using the UK Department for Work in Pensions Innovation Fund and the Department for Digital, Culture, Media and Sport Life Chances Fund, we compare and contrast how the UK central government has specified and calibrated Outcomes Funds in relation to payable outcomes, outcomes validation methods, and the discretion given to other parties in the contract. Using published qualitative and quantitative evaluation material, we then compare their performance against articulated policy goals and objectives.

Finally, in Section 5, we discuss the broader implications for public accountability when the focus of oversight is on outcomes rather than processes. We provide practical commentary on the necessity of having adequate capacity within government to oversee outcomes-based contracts if they are to improve public service delivery and advance of policy objectives. We also underscore important ramifications around a loss of democratic anchorage and the potential for outcomes to enable governments to abscond from their public duties. In closing, we highlight the critical importance of recognising inherently governmental functions even when contracting for social outcomes.

2 The Evolution of Public Contracting

In the pre-war period, states were largely organised into bureaucracies. In an ideal bureaucracy, governments were organised around hierarchical line management of subordinates by supervisors, relationships encapsulated in fixed jurisdictions ordered by rules, laws, or regulations. It was the holding of office, not the individuals themselves, from which the authority to issue commands was tied. Office holders were selected based on expertise and training, rather than patronage, and enjoyed stable, long-term, full-time, decently salaried positions with good pensions. A hallmark of bureaucratic management was record-keeping as a mechanism for ensuring equitable decisions – especially social service access – and preserving organisational memory. Thus, holding public office was characterised as a vocation with its own training, duties, and values (Weber, Gerth and Mills, 1948; Pollitt, 2009; Torfing et al., 2020). Structured this way, under a governance paradigm now referred to as Traditional Public Administration (TPA), bureaucracies were seen to function as safeguards against tyranny and protectors of due process according to the constitution. Their advancement throughout the nineteenth and twentieth centuries was largely based on their 'technical superiority over any other form of organization', especially in organising and delivering high-volume standardised tasks (Weber, Gerth and Mills, 1948).

In practice, however, bureaucracies had their drawbacks. They were thought to encourage instrumental rationality at the expense of substantive rationality, encouraging rule following over results and emphasising accountability for processes rather than results. This emphasis on process meant that bureaucracies had a penchant for creating more rules to make existing rules less ambiguous, stripping innovation and energy from daily work and removing incentives to encourage higher performance resulting in a lifeless 'iron cage' (Weber, Gerth and Mills, 1948). If left unchecked, bureaucracies were thought to grow indefinitely regardless of whether actual workload increased, and they were seen to be poor at coping with uncertain environments, new tasks, and horizontal ways of working: their competence within jurisdictional silos offset by an inability to speak across departments or agencies.

2.1 Privatisation

By the end of the 1970s, the old social democratic order was in crisis and bureaucratic challenge was on the rise. With economic stagflation and widespread strikes by large public sector trade unions, the growing middle classes of the US and UK began to resent high taxation and became disenchanted with large post-war welfare states. Concerns about politicians favouring expansionist public agencies advanced the introduction of public choice theory where government failure was characterised as endless public bloat necessitating continually growing tax levels but poor economic performance (Boston, 2011; Ferlie, 2017; Niskanen, 2017). In the words of the Trilateral Commission, the 'large public sectors in the Western world were "overloaded" with problems and demands' and 'society and the economy were becoming more "ungovernable"' (Torfing et al., 2020 quoting Crozier et al., 1975).

The solution to the problem of government was to shift the production of welfare to the private sector, 'increasing the reliance on self-regulating markets and communities' (Torfing et al., 2020, p. 55). This milieux, combined with small-state political rhetoric, gave birth to a suite of reforms meant to shrink the size of direct government action and introduce the discipline of private markets and management, a public governance paradigm called New Public Management (NPM) (Torfing et al., 2020). NPM reforms are strongly associated with the political rise of the New Right and were famously pursued by UK Prime Minister Margaret Thatcher, who served from 1979 to 1990, and two-term US President Ronald Reagan, first elected in 1980 (Ferlie, 2017).

NPM functioned on the logic that government bureaucracies routinely failed to achieve economic and organisational efficiency (Hefetz and Warner, 2004). Though loosely coupled, NPM reforms promulgated the notion that government failure could be mitigated by shades of market involvement. Large welfare programmes were scaled down, marginal tax rates were slashed, and 'privatization and contracting out' were pursued alongside 'marketization of services still inside the public sector' and the strengthening of 'performance management and managerialization' (Boston, 2011; Ferlie, 2017, p. 2). In his paper 'A Public Management for all Seasons?' Christopher Hood provided a list of seven doctrinal components of NPM, condensing the core logics of the bureaucratic reforms which have dominated OECD countries since the late 1980s (see Table 1) (Aucoin, 1990; Pollitt, 1990; Hood, 1991). Ewan Ferlie likewise distilled NPM into three 'M's: i) *markets* and quasi-markets; ii) *management* within agencies; and iii) *measurement* of performance (Ferlie, 2017).

Market reforms included the privatisation of nationalised industries like public utilities, the outsourcing of public services to third parties, and the creation of 'quasi-markets' for those services still directly delivered by government. For example, the introduction of the internal market to the National Health Service in 1991 separated purchasers (i.e., health authorities and general practice fundholders) from providers (i.e., hospitals and community health service providers) and charged the former with 'seeking the most cost-effective forms of care for their local population' by 'contracting with hospitals and community health Trusts to provide necessary care' (Rosen and Mays, 1998, p. 105) – indicative of doctrines four and five (Ferlie et al., 1996; Ferlie, 2017).

Management reforms focused on disaggregating and downsizing bureaucracies (e.g., Next Steps Initiative), exporting operations into executive agencies that were then performance managed from above by political principals (Ferlie, 2017, p. 2). This marked a purposeful step-change from the security of rule- and

Table 1 Doctrinal components of New Public Management

NPM Doctrine	Meaning	Typical Justification
1. Hands on professional management in the public sector	Active, visible, discretionary control of organisations from named persons at the top, 'free to manage'	Accountability requires clear assignment of responsibility for action, not diffusion of power
2. Explicit standards and measures of performance	Definition of goals, targets, indicators of success, preferably expressed in quantitative terms, especially for professional services	Accountability requires clear statement of goals; efficiency requires 'hard look' at objectives
3. Greater emphasis on output controls	Resource allocation and rewards linked to measured performance; breakup of centralised bureaucracy-wide personnel management	Need to stress *results* rather than *procedures*
4. Shift to disaggregation of units in the public sector	Break up of formerly 'monolithic' units, unbundling of unitary form management systems into corporatised units around products, operating on decentralised 'one-line' budgets and dealing with one another on an 'arms-length' basis	Need to create 'manageable' units, separate *provision* and *production* interests, gain efficiency advantages of use of contract or franchise arrangements *inside* as well as outside the public sector

Table 1 (cont.)

NPM Doctrine	Meaning	Typical Justification
5. Shift to greater competition in the public sector	Move to term contracts and public tendering procedures	*Rivalry* as the key to lower costs and better standards
6. Stress on private sector styles of management practice	Move away from military-style 'public service ethic', greater flexibility in hiring and rewards, greater use of PR techniques	Need to use 'proven' private sector management tools in the public service
7. Stress on greater discipline and parsimony in resource use	Cutting direct costs, raising labour discipline, resisting union demands, limiting 'compliance costs' to business	Need to check resource demands of public sector and 'do more with less'

Source: Adapted from Hood, 1991.

