

DISENTANGLING BLURRING BOUNDARIES: THE PUBLIC/PRIVATE DICHOTOMY FROM AN ORGANIZATIONAL PERSPECTIVE

Chapter (PDF Available) · January 2003 with 377 Reads

Cite this publication

In book: Retraing public administration, Edition: 1, Chapter: DISENTANGLING BLURRING BOUNDARIES: THE PUBLIC/PRIVATE DICHOTOMY FROM AN ORGANIZATIONAL PERSPECTIVE, Publisher: Jai/Elsevier, Editors: M.R. Rutgers, pp.89-106

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Abstract

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DISENTANGLING BLURRING BOUNDARIES: THE PUBLIC/PRIVATE DICHOTOMY FROM AN ORGANIZATIONAL PERSPECTIVE

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Gerrit S. A. Dijkstra and Frits M. Van der Meer

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ABSTRACT

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This chapter analyzes the multi-dimensional character of the public/private distinction as it is applied to organizations. It argues that there is not just one grand dichotomy, but rather a series of separate but interrelated dichotomies. A multi-perspective approach is therefore needed. Four perspectives are distinguished here: a legal status perspective, a legal and regulatory power perspective, a legal-economic ownership perspective, and an economic funding perspective. The perspectives are distinct but interrelated, yet can be at odds with each other. The effects of these varying public/private dichotomies on the issues of the responsibility and democratic accountability of organizations are examined and explained.

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INTRODUCTION

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According to many public administration and management textbooks the boundaries between state, government and society have become increasingly blurred (Denhardt, 2000; Heffron, 1989; Rainey, 1997). The adverb

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Retracing Public Administration, Volume 7, pages 89-106.
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ISBN: 0-7623-0956-3

1 “increasingly” denotes “change.” The prevailing idea is that perhaps in the era
2 of the 19th and early 20th century Rechtsstaat a concise definition of the
3 “private” and “public” character of different organized forms of service
4 delivery could be given. Due to development of the welfare state that such
5 precision would hardly be the case for modern government.¹ The widespread
6 acceptance of public and private osmosis² was reinforced by the ready adoption
7 of New Public Management ideas emphasizing the necessity of including the
8 private sector in the production of collective goods and incorporating private
9 sector methods, norms and values in public sector organizations (Hague, 2001).
10 However on the other hand regulatory action authorized by public decision-
11 making (bodies) is still found to have a pervasive sway over many aspects of
12 everyday (organizational) life (Bozeman, 1984; Peters, 1988a).

13 On a theoretical level, the demise of the “grand dichotomy” (Bobbio, 1989)
14 has opened the way for constructing an array of public/private dichotomies,
15 often under the guise of empirically based continua, rooted in distinct
16 disciplinary (and often sub-disciplinary) frames of reference. Each perspective
17 can serve as a conceptual lens and taken separately they offer an exceptional
18 conceptual precision (Morgan, 1986). At the same time reality is being reduced
19 to a conceptual fiction and that when taken together the resulting image is
20 blurred as looking through a glass, darkly.

21 But is this really a problem? Are there really any significant consequences
22 attached to the dominant approach when analyzing contemporary organiza-
23 tional performance and behavior? From a conceptual point of view the
24 “blurring boundaries” argument (as currently formulated) is erroneous and can
25 particularly easily lead to misinterpreting the consequences of various
26 dichotomies related to basic issues of organizational responsibility and
27 democratic accountability. A particular public/private dichotomy is always
28 constructed on the basis of a specific disciplinary perspective with the
29 incorporated mode of justification. Those perspectives and grounds of
30 justifications can be contradictory as they together intersect different domains
31 of reality. Studying those internal inconsistencies can be particularly helpful for
32 our understanding of flaws in accountability structures in private and public
33 organizations. This chapter we will take a predominantly continental European
34 perspective, since public/private dichotomies in organizational terms are bound
35 by a given political, economic and legal institutional order. Particular the latter
36 dimension is more stressed in European-continental than in Anglo-Saxon
37 approaches.

38 The chapter opens by examining some of the theoretical arguments
39 underpinning the osmosis thesis of public and private organizations. Following
40 this deconstruction of the dichotomy, five perspectives dominant in the debate

1 are introduced and discussed. As the “grand dichotomy” is made of a great
2 number of “smaller” but interrelated dichotomies, we have to examine
3 the effects when interrelating or integrating these five perspectives. Using the
4 concept of differentiated integration (Rutgers, 1993) we point to the causes of
5 a deficient (formal) arrangement of responsibility and democratic accountabil-
6 ity in some private and public organizations.

7 8 **BLURRING BOUNDARIES BETWEEN PUBLIC AND** 9 **PRIVATE ORGANIZATIONS?**

10
11 The blurring boundary argument has deep roots in (Anglo-Saxon) public
12 administration and management literature.³ As early as 1953 Dahl and
13 Lindblom pointed to mixed or hybrid organizations, positioning them between
14 “ideal-type” public and private organizations. Rainey (1997) points in addition
15 to the functional overlap between public and private service delivery. Chris
16 Hood and Gunnar Schuppert (1998) have analyzed in “Delivering public
17 services in Western Nations” alternatives to core public bureaucracies as
18 public enterprises and private organizations in public service delivery. In
19 “Comparing public organizations” Peters (1988b) develops the argument that
20 public service delivery is characterized by multitude of organizations with
21 varying degrees of “publicness.” Using a “personnel” perspective, he delineates
22 a scale with at the one extreme, organizations staffed by people on the
23 government pay-role and the other organizations created due to the very
24 existence of government organizations and more particular government
25 action.

26 This claim of an ever-increasing osmosis of public and private components
27 in public service delivery is both valid as it is missing the point. Valid since it
28 recognizes that government and society and public and private are not mutually
29 exclusive realms of life. Human (state) communities (including its governing
30 component) cannot be separated from the constitutive “membership.” A certain
31 individual is named a citizen because of her/ his affiliation to and participation
32 in a (state) community. The state community cannot endure without having (at
33 least the tacit) support or the absence of noncompliance of those citizens.
34 Hence a reinforcing bond does exist between the organized community and the
35 citizen. Contemplating a little bit more on the osmosis thesis the mere existence
36 of government implies governing and intervention in society and private life.
37 The German and Dutch words for government “Obrigkeit” and “overheid”
38 roughly translates as “the institution that is placed above civil society.” The so-
39 called classic public tasks of maintaining law and order and defense involve
40 intervention at the societal level. In addition, private (law) non-profit and

1 for-profit organizations in many countries have traditionally taken part in
2 delivering public services (Hood & Schuppert, 1998). These organizations have
3 been either invited to take part in that service delivery on behalf of government
4 or have preserved their presence in a policy area that has been brought into the
5 public domain when the Welfare State was established.

6 The osmosis thesis is missing the point, as it tends to undervalue the defining
7 elements of the public and private dimensions of human cooperation and
8 organization. For whatever views are aired about the empirical validity of a
9 public/private division, in all expositions explicit but more customary implicit
10 theoretical assumptions on the nature of the dichotomy are made. Far too often
11 (growing) state or government intervention in society is seen as a proof for the
12 (gradual) disappearance of clearly demarcated zones of public and private life.
13 In this particular view these public and private zones exist on an identical plane
14 or to put it metaphorically as "separate geographical areas." The use of the
15 concepts (state) "government" vs. "society," "public" vs. "private," implies a
16 binary construction of meaning without being too precise about the
17 "dichotomical" nature of the underpinning concepts.

18 Most public administration and management authors are certainly not
19 (overtly) naïve. In a disjointed effort to get a grip on the public/private issue,
20 authors try to examine what might be the distinctive characteristics of private
21 and public forms of organizations. The environmental exposure and transac-
22 tions, structural characteristics, multiple and vague goals, and the nature of the
23 personnel systems are brought forward as possible explanatory elements (see
24 Rainey, Backoff & Levine, 1976; Rainey, 1997). In addition, the examination
25 often involves finding a justification for the mere existence of public
26 organizations (and thereby the area of study). The customary sources of
27 justification are found in legal, economic and political lines of argumentation.
28 For example Bozeman (1984) argues in "All organizations are public" that it is
29 possible to distinguish varying scales of organizational "privateness" and
30 "publicness" utilizing the perspectives of economic and political authority.⁴
31 Wamsley and Zald (1973) have tried to classify organizations using the
32 perspectives of organizational funding and ownership. The legal perspective
33 becoming apparent in the legal status and powers of organizations is less
34 explicitly mentioned in Anglo-Saxon public administration literature but quite
35 influential in continental European thinking. Nevertheless, the legal status
36 perspective is quite pervasive though implicit present in the osmosis thesis and
37 accepted as a given condition in many other perspectives, e.g. the ownership
38 perspective. This leads to a certain degree of fuzziness. Why do we consider
39 these efforts to be disjointed? Mainly because little or no attention is paid to the
40 discussion of the convergence and divergence of different perspectives or

1 aspects on this dichotomy and the practical consequences for public and private
2 service delivery issues.

3 Part of the confusion regarding the “publicness” and “privateness” of
4 organizations originates from an implicit definition of “public” and “private”;
5 equating “public” with “government” and “private” with “civil society” or the
6 “individual.” Moreover, lurking in the background is a (hidden) legal status
7 perspective which is mixed with political, regulatory, legal powers, funding and
8 ownership perspectives. Our perspective is to disentangle those perspectives
9 and to “deconstruct” the focus on a single public/private dichotomy in a
10 multiplicity of public/private dichotomies that are partly concurrent and partly
11 contradictory.

12 13 **THE MULTI-DIMENSIONAL CHARACTER OF THE** 14 **PUBLIC/PRIVATE DISTINCTION APPLIED TO** 15 **ORGANIZATIONS** 16

17 18 Introduction 19

20 The multiple dichotomies alluded to in the previous section originate in
21 different perspectives on what can be called public and private life and
22 (organized) governance. A multi-perspective approach is the more compelling
23 given the multi-dimensional character of government and public administra-
24 tion. Before getting into this issue we first have to deconstruct the
25 public/private dichotomy in its relevant components. We will examine five
26 dominant perspectives on the demarcation of private and public organizations:

- 27 • A political control and institutional perspective;
- 28 • A legal status perspective;
- 29 • A legal and regulatory power perspective;
- 30 • A legal-economic ownership perspective;
- 31 • An economic funding perspective.
- 32

33 34 A Political Control and Institutional Perspective on the Public/Private 35 Dichotomy of Organizations 36

37 The political perspective on the public – private dichotomy is hard to grasp
38 because of the vast range of the concept of politics. In Lasswell’s (1950)
39 definition the domain of politics is framed in terms of who gets what, why and
40 when; we really perceive politics as a collective decision-making process. That

1 collective decision-making process involves decisions are authoritative in the
2 sense that they are binding on individuals who belong to a given "collective."
3 The intensity of the binding force differs greatly for private organizations and
4 public organizations. The exit option is more readily available in private
5 organizations than in public ones.⁵ This contrast will later be explored in depth
6 when we discuss the legal status and legal power perspectives. A major
7 difficulty attached to this approach regards the fact that the very nature of
8 organizations involves making collective decisions which are binding on the
9 members. The public/private dichotomy would have to be corresponding to
10 organizations with solely an internal binding force (private) and organizations
11 with both an internal and external binding force (public). This issue stands at
12 the heart of the legal power perspective that will be discussed below.

13 Apart from the decision-making dimension of politics, we can distinguish a
14 political-institutional point of view. From this perspective we observe political-
15 institutions considered to be authoritative mediums for demarcating the public
16 and private realms of life. This approximates to Bozeman's approach on the
17 "publicness" and "privateness" of organizations, more particularly the level of
18 political authority (Bozeman, 1984). By political authority Bozeman means
19 powers that have been granted to organizations by authoritative components in
20 a political system make binding decisions and act on behalf of the community.
21 However, the concept of political authority depends on other legal and
22 economic perspectives concerning issues as legal status, legal powers,
23 ownership and funding perspectives of organizations.

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The Legal Status Perspective on the Public/Private Dichotomy of Organizations

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All formal organizations are permitted, condoned by and grounded in law. The preferred form of the legal foundation (constituting the formal institutional order) of an organization is consequential for the manner an organization is created and dissolved, the access and exist modes for participating actors; how and in what directions it can operate and how the relations to its membership issues are arranged (cf. Ostrom & Kiser, 1982). With respect to the latter we particularly refer to issues such as accountability and responsiveness. In most continental European legal systems a clear division is made between entities and organizations with either a public or a private law status. The fundamental difference is that private law organizations are created by a voluntary act of founding members. People are free, given certain legal requirements, to establish, to join, or leave an organization on their own free will in accordance to a given private law form. The way accountability provisions are arranged

1 vary also according to the applicable private law arrangements. The absence of
2 coercion and the assumption of a free determination of individuals to make
3 those decisions that they consider are in their own best interest, is the essence
4 and objective of private law mode. Of course those acts and decisions with
5 legal consequences are enforceable in the sense of a legal execution of
6 contracts and the autonomy of individuals can be limited by public provisions
7 in order to limit the chance of undue exertion of coercion by the stronger party
8 in the game. Maintaining and operating the legal framework of society is
9 generally considered a core public responsibility in mainstream western
10 thinking.

11 Next to these private law organizations, other organizations are distinguished
12 with a public law status. These organizations are founded on the basis of
13 constitutional acts, framework acts or specific or sui generis legislation. Their
14 public law nature implies that the admission and leaving of members (i.e.
15 citizens) are not voluntary (i.e. in particular with regard to the “initial”
16 organizations such as the central state and municipalities). These organizations
17 have specially written arrangements described in founding laws and statutes,
18 which define arrangements regarding financial and democratic accountability.
19 The latter is the more appropriate, as government organizations are heteroge-
20 neous in nature, staffed by political officials and professionals who act on
21 behalf of the wider society. It is worth repeating that it is fairly customary
22 (explicitly or implicitly) to use this status criterion to characterize organizations
23 with a private law basis as the private perspective of the dichotomy and the
24 organizations based on public law as the public perspective. It may be obvious
25 to use this criterion as the basis for a public/private dichotomy, but this
26 application does not at all encompass the whole legal perspective of
27 demarcating public and private organizations.

28 29 The Legal and Regulatory Power Perspective on the Public/Private 30 Dichotomy of Organizations

31 Apart from the issue of the nature of legal status, organizations are endowed
32 with powers and authorities that come in two categories:

- 33 • Private law powers and authorities; and
- 34 • Public law powers and authorities.

35
36 Private law powers are common to all formal organizations regardless of
37 whether they have a public or private law status. The fundamental principle is
38 that organizations with private law powers and authorities can take part in
39 “private law transactions.” Organizations are analogized (with some excep-
40 tions) to individuals who are free to act according to the way they deem right.

1 They can acquire or sell property, make contracts, hire personnel etc. The
2 crucial feature of “private law actions” is that actors are considered equal and
3 from that equality they can participate in interactions with legal consequences.
4 Having made an agreement on a voluntary basis, that right can be executed and
5 enforced. The private law perspective involves a plurality of actors who
6 manifest themselves from a legal point of view on an equal basis. Organizations
7 that hold solely private law authority and powers are considered to be private
8 organizations.

9 Public law powers and authorities have a one-sided nature. The justification
10 for exercising public authority does not originate from the goal of providing
11 a framework for interpersonal exchange between private citizens and/or private
12 organizations, but to protect what is interpreted to be the general or public
13 interest. What is considered public and private interest is a highly complicated
14 issue but, in accordance with what has been said in the previous section, we point
15 to the political character of the process of general interest formulation. The use
16 of public power is never dependent on the consent of another party. That is an
17 essential aspect of the meaning of the “Obrigkeit” character of public power. A
18 police officer when enforcing a speed limit need not negotiate with the offender
19 for being allowed to write a ticket. Organizations that hold public law authority
20 and powers are thus classified as public organizations. Given the nature of the
21 democratic Rechtsstaat or rule of law principle, those powers are bound by legal
22 protective and democratic guarantees.

23 24 The Legal-Economic Ownership Perspective on the Public/Private 25 Dichotomy of Organizations 26

27 A third perspective is the legal-economic perspective of the ownership relations
28 (cf. Wamsley & Zald, 1973; Lane, 1985). The ownership perspective has two
29 facets. First, it bridges the intermediary ground between law and economics. To
30 “own” means a person or organization has the right to some property or goods.
31 Second, ownership also pertains to control issues. Ownership indicates the
32 possibility to do something with goods or property or to influence the
33 operations of an organization one “owns.” Organizations that are owned by
34 government or public law organizations are thus perceived to be “public”
35 organizations. Conversely private ownership is the case when, in this case, an
36 organization, is owned and controlled by private parties or individuals. Situated
37 behind the ownership perspective is a legal status dimension. From this
38 ownership definition it follows that public organizations first include cen-
39 tralized and functional and territorially decentralized core bureaucracies as
40 departments, agencies and local government bodies. The same applies to those

1 public enterprises and institutions with a public law status. In addition,
2 organizations with a private law status but owned by government (organiza-
3 tions) are also considered to be “public.” This includes private enterprises
4 whose stocks are owned by government, foundations and other types of private
5 law organizations where government has a controlling interest.

6 Different from the above-mentioned legal perspectives on the empirical and
7 contrary to the conceptual level there exists no sharp bipolar distinction
8 resulting in two exclusive modes of ownership as partial ownership and the
9 existence of preferential shares complicate the issue. Even where government
10 has a minority of the shares, still government can possess a controlling power
11 and influence as in the case of a stock company the remainder of the shares can
12 be divided over minor shareholders or in the case of as said preferential shares
13 that are in the hands of government. Thus the use and the extent of control
14 becomes essential.

15 16 The Economic Funding Perspective on the Public/Private 17 Dichotomy of Organizations

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19 From a finance perspective, the source of income for an organization is often
20 used to differentiate between public and private organizations. The funding
21 perspective originates in the economic analysis of market failures. Those
22 market failures relate to market imperfections such as the dominance of
23 monopolies, the existence of external effects and the nature of public and
24 private goods delivery. Those market failures are a cause for public intervention
25 in the economy and in some cases an argument for public service delivery.
26 Refraining from the use of the market mechanism (or correcting its operations
27 for instance by regulatory means) for the production of goods implies a reliance
28 on public service delivery. Associated with the latter is the utilization of the
29 budget mechanism to fund these publicly produced goods and services. The
30 division between “public” and “private” from a funding perspective is thus that
31 private organizations are funded by the market mechanism, whereas public
32 organizations are financed by allocating budgets. Again, this perspective does
33 not necessarily coincide with one of the public/private dichotomies examined
34 above. An organization that might be regarded to be “private” in the light of one
35 of the perspectives discussed above can at the same time be considered public
36 from the funding perspective when the whole or the majority of its income is
37 supplied by budgets. Many intermediary (private) organizations in areas such
38 as health care, education, or social security largely depend on government
39 budgets through the means of subsidies for their operations regardless of their
40 legal status, powers or the nature of the ownership. The reverse is true with

1 respect to public law organizations that sell their products through a (quasi)
2 market system. For example public utilities and transport companies that earn
3 their income by selling their products and services to individual customers.

4 5 **PUBLIC/PRIVATE DISTINCTIONS AND THE** 6 **ISSUE OF RESPONSIBILITY** 7

8 In our introduction we have drawn attention to the popular opinion that the
9 “public and private” sectors and organization are increasingly converging. We
10 have dissected the public/private dichotomy in five distinct perspectives.
11 Though not in all cases involving empirically binary divisions from a
12 conceptual point of view they offer a distinct perspective on the public or
13 private nature of organizations. By dissecting the dichotomy we should not
14 forget that these perspectives are interrelated because they point to particular
15 aspects of organizational “life.” We have argued that the lines of demarcation
16 cut through different domains of reality. We will now examine what the
17 implications are when intersecting the different perspectives. We will
18 concentrate our attention on the issue of organizational accountability.

19 In the previous section we introduced two dichotomies involving the legal
20 status and powers of the organization. The first dichotomy pertaining to the
21 public and private law status of an organization was concluded to have a binary
22 character. With respect to the legal power issue matters seemed at first glance
23 a little bit more complicated as all organizations hold private law powers and
24 responsibilities regardless of their private or public law status. Nevertheless,
25 public and private law powers are contradictory concepts. Figure 1 reveals that
26 the status and power divisions do not perfectly match. Some public status
27 organizations lack public powers, while a number of private law status organi-
28 zations do hold these kinds of powers.

29 Combining both bipolar classifications, organizations are found with mixed
30 “public” and “private” characteristics. Some public status organizations do
31 only hold private law powers, whereas a number of private status organizations
32 enjoy public powers. To understand how these organizations are made
33 accountable we need to extend our earlier points about the legal status of
34 organizations. The legal foundation determines the relevant accountability
35 structure of an organization. Public law and its founding principles (e.g.
36 stemming from the Constitution and other basic legal documents) provide the
37 accountability arrangements governing public law organizations. In contrast
38 the accountability of private law organizations is stipulated in civil codes. The
39 institutional design of public law organizations is partly fixed (think of
40 constitutions and institutional framework legislation) and partly open (specific

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Fig. 1. The Legal Status and Power Perspectives on the Public/private Dichotomy.

laws). The accountability arrangements can thus be structured according to the needs and purpose served. This makes the institutional order of public accountability arrangements highly adaptable. For private law organization only a given set of institutional forms and associated accountability structures are available. For instance the daily board of an association is accountable to its membership, the board members of a foundation are not accountable to any other body within this private law organization because of the absence of a "membership." Within a limited liability company the board is responsible towards the shareholders meeting and in a larger company also towards the board of commissioners.

The basic principle laid down in the Rechtsstaat conception of public law is: there is no authority without responsibility and no responsibility without authority. Turning to the second part of the maxim: "no responsibility without authority." No one can be held responsible for decision-making without having the possibility to have influenced decision-making. The first part (no authority without responsibility) refers to the imperative of institutional arrangements regarding the accountability within public organizations. Essential to public authority and powers is its unilateral character. Public decisions

1 can be imposed without the direct consent of the people involved. In a private
2 organization there is also the real possibility of coercion, but it is only possible
3 when a person or organization has voluntarily agreed to an action in an earlier
4 stage (by means of a contract). In short, the difference between private and
5 public authority is respectively their bilateral or unilateral character. Because of
6 the unilateral character of public authority, at least in a democratic system,
7 persons and organizations in charge are made accountable towards a
8 democratic body. A notable exception is (of course) the judiciary.

9 Returning to Fig. 1, few problems arise with respect to the issue of
10 accountability for organizations positioned in fields I and IV. They closely
11 resemble the "ideal-type" public and private organizations. The nature of their
12 powers coincides with the preferred structure of accountability arrangements.
13 Field I organizations have a compulsory membership, and decisions can
14 formally be forced upon the members without having to obtain the individual
15 consent of each member. The axiom of the democratic Rechtsstaat and the
16 principle of no authority without responsibility presume the existence of
17 accountability structures both in political (representative democracy) and
18 (administrative) legal terms. Field IV organizations are conversely marked in
19 principle by open access, exit methods and related accountability structures.
20 Field II organizations have an accountability structure comparable to field I
21 organizations. Although they do not have public powers, they are involved in
22 operating public monopolies. From an accountability perspective the real
23 problem occurs in field III organizations. These are endowed with public
24 powers, but their democratic accountability structure only pertains to their
25 membership. In many systems legal control (based mainly on administrative
26 law) exists but administrative legal cannot compensate for the deficiency of an
27 anticipatory democratic accountability.

28 The easy solution would be to increase the control by way of (increasingly)
29 regulating these field III class organizations, but then again another problem
30 can arise. These private status organizations have their own private accountabil-
31 ity structures. Stricter regulations (which in the end involve public account-
32 ability) can result in these organizations becoming de facto public status
33 organizations.

34 In addition to the two legal perspectives, we have alluded to the ownership
35 and funding perspectives. Walmsley and Zald⁶ have combined these two
36 perspectives in an overarching scheme.⁷

37 Taking the ownership and the funding perspectives on the public/private
38 dichotomy together we see that these perspectives do not coincide with the
39 exception of (similar to scheme one) the core public bureaucracies and
40 "private-for-profit" organizations. Does this matter? It does when we combine

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Fig. 2. The Ownership and Funding Perspectives on the Public/Private Dichotomy
(Based on Rainey, 1997 and Wamsley & Zald, 1973).

these two perspectives with the issue of accountability derived from the legal perspectives discussed above.

Both ownership and funding perspectives suggest government organizations (conceived as a field I legal organization) being able to exert control over industries and service delivery that is considered vital according to the then dominant political view. Again we encounter the political control argument here.

Ownership implies influence over the operations of an organization at least in principle. First, that control (in case of public ownership) can be deployed in a direct manner, as is for instance the case in field I class organizations. Second, with respect to field III organizations, control can be exercised either directly (public enterprises with a public law status) or indirectly (public enterprises with a private law status). In case of a direct ownership relation, government and the political institutions have economic control over the relevant organization and are directly accountable for the way that a particular organization functions. When government is the main or sole shareholder e.g. in a limited liability company, the public organizations has a formal position of power due to its ability to dominate the shareholders meeting and influencing the appointments to the board of commissioners. As this option for intervention is only indirect serious constraints are put on the actual possibility to intervene.

1 These limitations, caused by legal provisions relevant to the particular
2 ownership construct, do not necessarily coincide with both political (often
3 parliamentary) and popular views of the preferred degree of political control
4 and accountability. Giving way to these demands, for instance by way of
5 (partial) re-nationalization or intensifying public regulations, (quasi-) public
6 (law) organizations are made.

7 The English saying “who pays the piper calls the tune” implicates a similar
8 relationship between funding and influence. Referring to budget funding, we
9 have to make a distinction between the budget funding of organizations owned
10 by government (field I) and private organizations that get their budgets by
11 means of subsidies (field II). Those budgets (particular in field II organizations)
12 operate in a twofold way. The subsidy and the attached conditions stipulated in
13 guidelines offers government at first sight an excellent possibility to influence
14 and to control the operations of those particular organizations. Again control
15 implies authority and the exercise of power. However often that control is
16 limited to issuing general guidelines. Given the nature of their tasks
17 organizations are seldom limited to a mere neutral implementation of tasks but
18 are usually involved in operational policymaking. The use of subsidies by
19 privately owned organizations leaves some questions open relating to the
20 quality of (democratic) accountability given that capacity for operational
21 policymaking. Again, the solutions available can be found in enhancing the
22 level of control by issuing (additional) regulation on these field II organiza-
23 tions, nevertheless we again encounter the same problem mentioned above with
24 respect to the field III (legal) organizations.

25 In combining the perspectives we observe of a vast array of different types
26 of public and private organizations. With the marked exception of pure public
27 organizations such as central government and municipalities, and pure
28 private organizations such as profit organization like Shell, it is beyond doubt
29 that an organization can be both public and private at the same time using
30 different perspectives. If we go around the varying conceptual nature of these
31 perspectives, and reduce them to a one-dimensional empirical scale, a large
32 array of mixed and hybrid forms of public and private organization are situated
33 between the pure forms. But that bypassing can lead to misinterpreting the
34 basic causes of deficient accountability structures in public service delivery.

35 **CONCLUSION**

36
37
38 There are compelling reasons for holding on to the public/private dichotomy if
39 not as an empirical reality least on a conceptual level. Examining this
40 dichotomy we have concentrated on the demarcation between public and

1 private organizations. In the orthodox canon of public administration and
2 management literature the case of an ever-increasing osmosis between public
3 and private organizations is argued. Nevertheless this widely accepted
4 empirical argument presumes a conceptually founded position concerning the
5 nature of what is meant by the words "public" and "private," a step rarely
6 made.

7 Failing to do so leaves the door open to flawed lines of reasoning concerning
8 the empirical nature of public/private osmosis and more particular the side-
9 effects of what is called the multi-dimensional character of this dichotomy. In
10 this chapter we have therefore started from the assumption that on a conceptual
11 level what has been called the grand public/private dichotomy has to be
12 disseminated in separate but interrelated dichotomies based on different (sub)
13 disciplinary arguments. A multi-perspective approach is the more compelling
14 for guaranteeing that public service delivery operates within the confines of
15 adequate democratic accountability arrangements. A multi-perspective but
16 interrelated approach to the dichotomy is hampered by inconsistencies shown
17 by and seen through various conceptually disciplinary lenses. The different
18 perspectives underlying the public/private dichotomy (dichotomies) can be
19 helpful to detect both comparative and dissimilar features. We have
20 concentrated on the issue to what extent the effects of similarities and
21 inconsistencies in the different public/private dichotomies relating to organiza-
22 tions, have effects on the issues of responsibility and democratic accountability
23 within these organizations. Taking the issue of democratic accountability as the
24 core of our argument, we turned to the legal status perspective as a starting
25 point in working out a differentiated-integrative approach. The legal status
26 (constituting the formal institutional order) of an organization determines the
27 way the organization is created and dissolved, the access and exit modes for
28 participating actors; how and in what directions it can operate, and how the
29 relations to its membership issues are organized. In an organization with a legal
30 public status that involves compulsory membership of citizens of the "initial"
31 organization (central state etc). That organization is headed by elected officials
32 and there are rules concerning the way accountability is taken care of. The
33 public power perspective, with its potential to act unilaterally, does not cause
34 major difficulties if it is exercised by public status organizations. The real
35 trouble starts where you have organizations with (legal) public powers but who
36 are based on a private law status and accompanying accountability structures.
37 This problem becomes particularly acute in case these organizations are having
38 ample discretionary powers in order to make operational policy decisions.
39 Increasing supervision by issuing detailed regulations changes the organiza-
40 tions in de facto public legal status organizations. The same arguments can be

1 given with respect to the ownership and the funding perspectives as described
2 above.

3 In our examination of the public/private dichotomy with respect to
4 organization has shown that we can observe a vast number and types of public
5 and private organizations. Making a noticeable exception for “pure”
6 public organizations as for instance central government and municipalities and
7 “pure” private organizations as a for profit organization like Shell, an
8 organization can have both a public and private manifestation when using a
9 different perspective on the dichotomy. Disregarding the essential character-
10 istics of these perspectives and reducing them to a one-dimensional perspective
11 we can easily presume that mixed forms are abundant between the “pure”
12 categories.

13 From a multi-dimensional perspective and taking a differentiated science
14 approach as suggested by Rutgers (1993, 1995) our grasp of the dichotomy
15 becomes much clearer. The perspectives are distinct but interrelated yet can be
16 at odds with each other. In order to deal with this we have used the
17 accountability perspective (laid down in the legal status perspective) as a
18 starting point for the integration. Thus we found that those organizations that
19 combine public power, funding and ownership without a public legal status
20 have profound difficulties with public accountability. Being aware of that fact
21 is greatly helped by using a multi-dimensional approach to the public/private
22 dichotomy where it concerns organizations.

23 24 **NOTES**

25
26
27 1. The contrast between the Rechtsstaat and the welfare state is a false one because
28 there are not antithetical (see Page & Wright, 1999 as an example of authors falling in
29 this trap).

30 2. Of course osmosis does not imply fusion. This metaphor derives from biology
31 says that the system boundaries are permeable but still existing.

32 3. For instance the founding father of Dutch public administration Van Poelje
33 (1931/2001) published a book with the title ‘Osmosis’ well before World War II.

34 4. The term ‘publicness’ and the collateral concept ‘privateness’ are interesting in
35 their own right. They suggest a continuum instead of a bifurcated separation. The
36 ‘publicness’ and ‘privateness’ concepts are rooted in an empirical framework. On a
37 theoretical plain the division still have the character of a dichotomy. The continuous
38 nature of the dichotomy is not naturally congruent with the osmosis thesis as the
39 continuum has an ordinal character.

40 5. From this perspective it is quite interesting to examine the differences between the
nature of public vs. private employment. In many continental European countries public
law appointment to the public service is formally not contractual but nominally one-
sided. Permission to leave has to be given.

- 1 Van Poelje, G. A. (2001). *Osmose: Een aantekening over het elkaar doordringen van de beginselen*
2 *van openbaar bestuur en particulier beheer. [Osmosis: comments on the intertwinement of*
3 *principles of public administration]. Alphen aan den Rijn: Samson. (Original work*
4 *published in 1931).*
- 5 Wamsley, G. L., & Zald, M. N. (1973). *The political economy of public organizations*. Lexington,
6 Massachusetts: Heath.
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Citations (11)

References (20)

... Bij het uitvoeren van publieke taken raken de publieke sector en de markt steeds verder vervlochten (Dijkstra & Van der Meer 2003). Om taken effectief uit te voeren werken tegenwoordig vele soorten organisaties samen in wisselende netwerken. ...

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... Flinders argues that 'the state consists of a highly heterogeneous network of organizations' (2006: 223). For Dijkstra and van der Meer (2003), the multiple dichotomies used to distinguish between types of public organisation, and the multidimensional character of the public/private distinction, is to a large extent based on the use of different perspectives on organizations: 1) a political control and institutional perspective, 2) a legal status perspective, 3) a legal and regulatory power perspective, 4) a legal/economic ownership perspective, and 5) an economic funding perspective. Trying to capture and comprehend these organisations through which the state operates has been the subject of much scholarship and draws on a variety of disciplines, particularly organisational theory and political science. ...

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