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Judicial Review Standards of American Private Administration and Its Revelation

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Abstract
Nowadays, more and more private entities undertake administrative tasks, provide public services, carry out public functions. In the era of multivariate public manager, how to build a private administrative accountability mechanism is a new task faced by the contemporary administrative law. Private administration could cause a lack of responsibility, the response of the United States is that Setting strictly judicial review standards of private administration and Carefully applying public law norms to private entities. Our country also faces a private administrative responsibility problem. observing the American private administrative judicial review standard will be conducive to the construction of our country private administrative responsibility mechanism.

Key words: Private administration; State action; Judicial review

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INTRODUCTION

Since the late 1970s, the United Kingdom, the United States, Australia, Germany, France have universally conducted public administrative reform with the introduction of competition and market mechanism in government management. Devolution of administrative power to lower levels, administrative privatization, administrative functions outsourcing, administrative duties privatization and public-private partnership became an international trend. Public services which were previously provided directly by governments nowadays are usually supplied by private entities on behalf of the central or local governments by contracts. Private entities began to undertake public administrative functions.

Private administration brings a lot of administrative law questions, among of which the most critical challenge is whether and how much private entities should undertake public law obligation. Administrative law is primarily aimed at ensuring accountability and legitimacy of organizations, therefore how to build accountability mechanism for private administration under the background of diversification of public administrative entity is a new task faced by the contemporary administrative law. Judicial review is the core mechanism of administrative law to keep accountability of public administration. The United States responded to that challenge by strict setting judicial review standards for private administration, deliberately applying public law to private entities. At present, China is fronted with the same problem of private administrative accountability. Private participation has become so common in the fields of public administration such as garbage collection, water supply, vocational education, police duties and food safety standards. Investigation on judicial review standards for private administration in US has refence for building a legal frame of responsibility of private administration.

1. THE TRADITIONAL JUDICIAL REVIEW STANDARD IN U.S.A- STATE ACTION

Judicial review is the core mechanism to ensure the accountability of state action, which means that court reviews whether state action is in accordance with the

Constitution and laws enacted by the Congress. What lay historic starting point for state action theory is decisions of the federal supreme court (hereinafter referred to as the Supreme Court) of U.S. on various civil rights cases in 1883, [1] in which the Supreme Court ruled that private hotels, theaters and transportation refusing to provide blacks with services did not violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution, because it was damage only caused by private entity, not state action prohibited by the Fourteenth Amendment. Thus, the Supreme Court made clear boundary between state action and private action.[2] The Constitution protects citizens' rights against state abuse rather than personal misconduct. The Constitution only regulates state action, while personal behavior is regulated by common law. It was summarized as "state action doctrine". If state action violates rights of the Constitution and federal law, the party concerned may bring tort action for compensation based on Section 1983 Chapter 21 Section 42 in the United States Code. In Shelley v. Kraemer,[3] the Supreme Court established two constitutive requirements for tort litigation for compensation according to Section 1983. First, tort behavior must be state action in the name of state law; Second, rights conferred by the Constitution and federal statutes are deprived by state action. American public law scholars also believe that the basic premise of the Constitution is governments but not private actors bear certain constitutional responsibilities. The Constitution protects individual rights and limits government power. Prohibition clauses in the Constitution generally only apply to government agencies and not to individuals. Therefore, traditionally U.S. public law does not regulate the relationship of rights and obligations between private entities. The object of judicial review is state action. Private action needs not face examination from public law norms.

2. CHALLENGE BROUGHT BY THE RISE OF PRIVATE ADMINISTRATION TO STATE ACTION THEORY

2.1 Background of the Rise of Private Administration in U.S.A

In the 1970s and early 1980s, U.S. faced the most severe economic recession since the Great Depression of the thirties. Problems like inflation, unemployment, government agencies expansion and financial deficit needed to be solved immediately. In January 1981, Reagan became the 40th president of U.S., and he stressed in his inaugural speech that government was not the solution but the problem with the current crisis. The manufacturer of difficulty was unnecessary expansion of government and its intervention and intrusion into our lives. It was time to halt and reverse the expansion of government agencies and its power, because indications showed that expansion had exceeded the will of the people. What I wanted to do is to limit the size and power of the federal government. While in office, the Reagan administration was committed to reducing the federal government agencies, giving more power to state and local governments, reducing the federal government's intervention in economic activities and emphasizing free operation of market forces. Ever since the 1980s, governments widely adopted the way of signing contracts with private entities to provide public services and to fulfill important public functions. Private entities not only provided a large number of social services such as water supply, garbage collection, road maintenance, education and training and health care but also fulfilled traditional public functions of governments like security management, interrogation of prisoners, environment enforcement and prison management. The phenomenon of private participation in public governance was increasingly common. During the past 30 years, the US had more and more enthusiasm in relying on market players and market mechanisms to provide social services especially in prison management. Due to an explosion of the prisoner population and public prisons overcrowd, government generally outsourced prisoners to private prison company, which ushered in a flourishing period for private prisons.

2.2 Typical Proof of U.S. Private Administration-Private Prison

Although private prisons are still an unthinkable thing currently in China, it has been long since private entities designed, built and managed prisons and even punished and educated prisoner inmates in America. In 1983, the first private prison management company CCA (Corrections Corporation of America, hereinafter referred to as CCA) was established. It is now the nation's largest private prison company, nearly staffing 15,000 employees, having a total of 65 prison facilities in 20 states and the District of Columbia and having 86,000 beds. The number of beds is after the federal government and three states. It holds 60 percent of the nation's private prison market.[4] In 1984, the second private prison management company WCC (Wackenhut Corrections Corporation, later renamed GEO) was established, who has become an international market leader in private prisons. 98 prison facilities are in

[1] 109 U. S. 3（1883）
[2] See Black, C. L. (2000). JR: State action, in 5 the Encyclopedia of the American Constitution (p.1736, 2482). In L. W. Levy et al. (Eds.).
[3] 334 U. S. 20（1948）
[4] See CCA 2013 annual report on form 10-K.Available on line here: http://cca.com/investors/financial-information/annual-reports. At 4

U.S., Britain, Australia, New Zealand and South Africa. GEO has 18,000 employees, 77,000 beds, holding up 30 percent of the total U.S. private prison market.[5] As of December 31, 2013, there were 1,574,741 prisoners in U.S., 133,044 were in private prisons, accounting for 8.4 percent of prisoner population, namely there was one prisoner detained in a private prison in every 12 prisoners in the United States (Carson, 2014).

2.3 Responsibility Challenges Brought by Private Administration

Different from management scientists focusing on efficiency and economists focusing on costs, public law scholars talked more about responsibility of private administration. Legal theory is used to divide society into two - the public domain and private domain. Public law regulates conduct of public authorities in the public domain, and private law regulates private conduct in the private domain. State action complies with public law norms, subject to judicial review, but private entity does not assume public law obligations, which are the inevitable result of public-private division. As a result, many public law scholars fear that private administration will cause governments evade traditional legal liabilities through private administrative privatization and functions outsourcing, eroding public law norms and exacerbating the lack of liability. For example, privatization enterprises are rarely subject to restrict from due process and information disclosure. In the age of privatization and general outsource of government functions, private entities fulfill more and more traditional functions but are not to scrutiny usually associated with public power. For that matter, private participation does draw attention to accountability, dwarfing unaffected executive discretion. Private exercise of government functions also causes conflict of interests between the private and public target, which is particularly evident in the case of prison, namely private's pursuit of maximum profit is in conflict with implementation of good public policy. However, in the view of privatization supporters, private administration does not bring responsibility shrink of public administration, believing that services can be supplied with the highest quality with minimal costs through market competition, and market ensured private administrative accountability better than control (Dannin, 2005). What urgent challenge private administration brings to public law and the practical field is when and how to apply the public law to private entities to ensure private administrative accountability when they fulfill traditional functions of governments.

[5] See GEO 2013 annual report, Available on line here: http://www.thegeogroupinc.com/documents/2013-report.pdf . At 3.

3. JUDICIAL REVIEW STANDARD FOR PRIVATE ADMINISTRATION IN U.S.A.: DIVERSIFIED JUDGE FOR STATE ACTION

When private entities started to perform functions traditionally considered exclusive to governments, the basic concepts of administrative law encountered unprecedented challenges. Whether those public law values people are familiar with such as openness, fairness, participation, no favoritism, accountability and rationality would be impeded because private entities are not subject to administrative law? In an era of general outsourcing and privatization of government functions, whether responsibility bored by government should be partly be handed over to private entities? Traditional standards that identified state action with public law loses clarity in many fields, so the court is obliged to develop new standards to allow certain private actions identified as state action.

3.1 New Application of State Action Standards in the Era of Privatization

The Supreme Court held that when a private conduct is in compliance with certain standards, in essence it can be identified as state action. That is a new application of the state action standard under the background of general outsourcing of government functions, and that is also a respond to the lack of responsibility triggered by private administration. However, for courts, it is not easy to judge whether an action constitutes a private action or a state action. Through reviewing a series of specific cases, the Supreme Court gradually established state action standards in the field of private administration. There are roughly three standards, which are public function test, close nexus test and state compulsion test.

3.1.1 Public Function Test

Public function tests concerns mainly the nature of a private action. When a private entity implements function traditionally considered exclusive to the state, private behavior is considered state action constrained by public law, because personal behavior has effect in public domain, essentially performing public functions.

Public function test got established in Marsh v. State of Ala.[6] Plaintiff distributed religious prints without permit on commercial street sidewalk in private town. The owner of the private town, a shipbuilder company, seized plaintiff and turned him over to police on the ground of trespassing. Marsh advocated that his constitutional rights of press freedom and religion freedom were violated. Justice Black ruled on behalf of the majority of judges that ownership does not always mean absolute domination. More open private land is to the public,

[6] 326 U. S. 496（1946）

more subject it is to the constitutional rights and statute rights enjoyed by the public. In this case, the town did not clearly mark boundary of private land ownership, and the private commercial street was open for non-city residents to freely enter the town. Although the town was privately owned, it was in nature not different from other public towns in America, where laid a public community. Therefore, private company managing private town was in fact performing public functions, constituting state action, subject to the Constitution. In West v. Atkins,[7] the Supreme Court ruled that physicians providing medical services to inmates in state prisons under contracts may be considered state actor in the name of state law. The case involved contracts of providing medical services to state prisoners between private doctors and the state. A prisoner brought litigation on the ground that private doctor deliberately ignored his need for health care and did not comply with the Eighth Amendment of the Constitution of "shall not impose cruel, unusual punishment". The majority opinion written by Justice Black believed that outsourcing of prison health care did not cancel constitutional obligation of the state to provide adequate medical care to those who have been imprisoned. The state had active duty to provide adequate medical care to West. The state gave the function to private doctors, and private doctors voluntarily implement obligation under contract. Supreme Court unanimously found that physicians' treatment of prisoners under the contract of employment was state action. In Edmonson v. Leesville Concrete Co.,[8] Inc, the Supreme Court found private party using peremptory challenge in civil jury selection to avoid two blacks constituted state action. The Supreme Court considered the following factors: whether private entity exercises traditional government functions and the degree of private relying on government support and funding, and whether damage was heavier due to unique ways of government power.

The Supreme Court has accepted the point that when performing public functions, private action can be identified as state action. However, the use of the standard is in quite much limits. Justice Rehnquist took the lead in introduction of such reservations in Jackson v. Metropolitan Edison Co. case.[9] A private power company actually having monopoly discontinued electricity supply to consumers without giving a hearing only because they refused to pay. The Supreme Court ruled that even if the utility companies substantially provide public service, that does not constitute state action, because the power supply is not traditional function exclusive states, nor is exclusively reserved by the states. Only private entities to implement government powers traditionally exclusively reserved to governments or functions traditionally associated with sovereignty, private actions would be recognized as state actions. In the Flagg Bro., Inc. v. Brooks, [10] Justice Rehnquist refused to identify financial custodian selling private property in order to achieve lien as state action, because dispute settlement between creditor and debtor traditionally is not part of public functions totally reserved for states. San Francisco Arts Athletics v. United States Olympic Committee[11] is a more recent case of public function test, in which Justice Powell thought on behalf of the majority that private entities only providing services to the public or performing functions also performed by governments does not constitute state action, so he ruled that the U.S. Olympic Committee was not a state actor because promotion of amateur sports activities was not traditional state function.

According to public function test, even if private entities perform functions widely considered to be socially important and traditionally belonging to governments, they are not likely to be seen as government actors. Only performing the functions traditionally exclusive to governments can be identified as state action. In U.S., after industrialization, most of traditionally public businesses were in private hands, including radio, telephone, electricity and long-distance transport, ship, rail and air. Therefore, very few functions can be described as traditionally and exclusively retained by governments in history. The Supreme Court interpreted so carefully, which made the scope of public function test become very narrow.

3.1.2 Close Nexus Test

In addition to investigating the nature of private action, courts found another angle to explore state action in the private sphere. That was to explore relationships between private actors, between private behavior and government and between government activities. If government was involved in a particular private behavior to a considerable degree and established fully close relationship with private behavior, private behavior can be attributed to state action, subject to the Constitution.

The prototype case that established close nexus test is Burton v. Wilmington Parking Authority,[12] which ruled that private restaurants' racially discriminatory action constituted state action based on the ground that private restaurants and parking authority had symbiotic relationship, and government had quietly embedded themselves with private restaurant to interdependent status, therefore the government should be considered participant of private action. In LeBron v. National R.R. Passenger Corp.,[13] the Supreme Court ruled that the Federal Railroad Passenger Corporation refusing to let LeBron lease station billboard to release a political advertisement constituted

[7] 487 U. S. 42 （1988）
[8] 500 U. S. 614（1991）
[9] 419 U. S. 345（1976）
[10] 436 U. S. 149（1978）
[11] 483 U. S. 522（1987）
[12] 365 U. S. 715（1961）
[13] 513 U. S. 374 （1995）

state action for the reason that the company was set up by a specially promulgated regulation so as to promote rail service policies, and the federal government controlled appointment of the majority of its managerial staff. Therefore, the company formed part of the government. A more recent case concerning close nexus test is Brentwood Academy v. Tennessee Secondary School Athletic Association. [14] The Supreme Court ruled that a private company adjusting sports competitions between the public and private schools was considered state actor, because the private company had entangled relationship with government agencies, specifically public schools accounting for 84% of the total membership of private companies, private companies staff being included into the state's public employee retirement system, and revenue of private companies primarily coming from fees paid by public schools. Justice Souter wrote the majority opinion believing that a private organization by statutes could be a state actor, when governments had widespread entangled with private companies on the aspect of staff composition and management operation, subject to constitutional standards to be examined.

In fact, only private entity and government reach a very close relationship can private behavior be attributed to state action. In Moose Lodge No. 107 v. Irvis, [15] the Supreme Court ruled that the government issuing license of serving drinks to private clubs did not mean that the latter's racially based discrimination was state action. Justice Rehnquist wrote the majority opinion believing that there was no symbiotic relationship in Burton case between government issuing wine supply license and private clubs discriminating, and government regulation did not show any sign of public or secret encouragement of discrimination, therefore discrimination of private club was not government behavior. In Jackson v. Metropolitan Edison Co., [16] Justice Rehnquist insisted that even if the government implemented a large number of controls over an industry, that industry behavior did not form state action. Controls must be very specific. In Blum v. Yaretsky, [17] although private nursing home was funded and licensed by the state, state controlled related facilities extensively, and the specific control required periodic reassessment of patients' needs, the Supreme Court still ruled that private nursing home was still not performing state action when it changed medicaid patients to lower standard care without notice and opportunity for hearing. Rendell-Baker v. Kohn [18] and Blum v. Yaretsky received judgments on the same day. In Rendell-Baker, the Supreme Court held that although the state was engaged in extensive regulation and funding over private high schools, private high schools' dismissing was not state action. In National Collegiate Athletic Ass'n v. Tarkanian,[19] the Supreme Court ruled that the National Sports Association of University Students suggesting the State University to dismiss Tarkanian as school basketball coach did not constitute state action on the ground that supervision on university sports activities was not traditional government function. In American Mfrs. Mut. Ins. Co. v. Sullivan,[20] the Supreme Court ruled that private insurance company rejecting to pay work injury compensation without prior notice and hearing before Resource Review Committee made a decision whether medical care for injured workers met the necessary and reasonable standard was not state action. Justice Rehnquist wrote the majority opinion believing that the existence of close relationship between private entity and government depends on that government may have exercised coercive power or provided significant incentives. In the case, private insurance company's deferring payment of work injury compensation under the authority of the state did not constitute government action, despite that authorization did motivate insurance companies to defer payment of insurance premiums. However, the incentive was negligible, far from being significant.

According to close nexus test, only government is fully involved in particular private behavior and a close relation between private behavior and the government is established, such as symbiotic relationship of mutual benefit or common intertwined relations, will private behavior be identified as state action. If the government does not fully involve in private conduct alleged, even if the government provides financial support to private entity, made extensive and detailed control or recognized private specific decisions by permission or tacit, private entity should not be regarded as a government actor.

3.1.3 State Compulsion Test

State compulsion test concerns whether private conduct is obligation mandated by law. When private conduct is performed because of compulsion from state law, it is regarded as state action.

Example is Adickes v. S. H. Kress & Co.[21] The Supreme Court ruled that state law requiring private restaurants to refuse providing services based on race constituted state action. The majority opinion written by Justice Harlan thought that when the government statute or a statutory custom force a private entity to implement racial discrimination, that discrimination is considered state action, subject to the Constitution.

3.2 The Limitations of State Action Standards

State action standards determine when private behavior

[14] 531 U. S. 288 （2001）
[15] 407 U. S. 163 （1972）
[16] 419 U. S. 345（1974）
[17] 457 U. S. 991（1982）
[18] 457 U.S. 830（1982）
[19] 488 U. S. 179 （1988）
[20] 526 U. S. 40 （1999）
[21] 326 U. S. 461 （1970）

should be subject to judicial review and the Federal Constitution. At the same time of privatization of government functions, courts must adjust the traditional state action theory and expand application of public law principles to privatize public functions. By expanding the application of state action standards, private administration is incorporated for judicial review in order to secure its responsibility, which was the response and efforts made by the U.S. Supreme Court against changes of state action. However, the Supreme Court was very cautious of possible ways of traditional accountability mechanism in expecting to incorporate private administration to judicial review and extending public law norms to insure private administrative accountability (Wecht,1987). From the point of view of judicial precedents, for private action to constitute state action, courts must examine whether there is sufficient close relation between private behavior and government or its officials, whether private is performing public functions traditionally and exclusively reserved for government, whether private behavior is forced out of government, and whether local government or officials are fully involved in private action, so that private action can reasonably be considered state action. In many cases, although private entity indeed fulfilled public functions originally belonging to government, although government implemented a large number of stringent regulations on private, and although government approved or granted impliedly a private action or provided financial subsidies to them, the Supreme Court still refused to regard these private behaviors as state action and let them receive examination from public law order.

Because the Supreme Court took a restrictive stance in private action constituting state action, and because of the lack of internal logical consistency in case law on state action, some scholars sharply criticized state action standards. They described those standards as a conceptual disaster area (Black,1967). Some scholars even believed it was absolutely impossible to apply the concept of state action reasonably and consistently (Berman, 2000). Current state action standards are based on antiquated concept of government, lacking concerns about benefits, health and education. In the era of privatization, the result of those restrictions would lead to insufficiency of protection of exercises of constitutional rights in government services or other actions, and those services were controlled by private organizations or provided through cooperation between private sector and governments. Indeed, the Supreme Court had always defined or distinguished their cases in order to strictly limit application of constitutional restrictions to private actors who were engaged in public activities. The Supreme Court had claimed in its holdings that state action principles limited the scope of federal law and federal jurisdiction, thereby protecting individual freedom. Without careful consideration, the Supreme Court boycotted the impulse of bounding private parties as the executive. In the Supreme Court's opinion, the meaning of privatization was not a zero - sum game between public law norms and private power. The way of generally applied public law norms to private actors by judicial review would change private sector to public institutions, which would weaken privatization gains (Metzger, 2003). When public law regulated private power, it was always faced with the dilemma between effectiveness and responsibility of private administration. In fact, in the accountability framework of private administration, the Supreme Court was more interested in non-traditional accountability mechanisms such as free market, third-party control, self-regulation or private regulatory systems from corporate law, securities law, and antitrust law and etc., rather than the traditional accountability mechanism judicial review. In Richardosn v. Mcknight, [22] the Supreme Court sentenced that guards in private prisons did not have the qualification of free from accusations of violating Section 1983 Chapter 21 Article 42 of the United States Code and recognized that market forces secured responsibility of private prison management. Justice Breyer pointed out in the verdict that in a competitive free market, it was unnecessary to immune private security guards from litigation, without which the performance of their duties would be impeded (wrapped in actions for damages), because it could be easily solved through insurance. Companies with aggressive guards would face increased costs of damage and would be replaced by another contractor, while companies with weak guards would be replaced by safer and more efficient company. The Supreme Court refused in the case to regard private prison guards as government actors to enjoy immunity but agreed with market forces, insisting on using market incentives to ensure private performed public duties. Supervision on private decisions is weaker than that in public domain, because in American's concept, only government power is dangerous enough to worth constitutional constraint, while private behavior does not have that kind of danger unless closely integrated with governments.

4. ENLIGHTENMENT TO CHINA

Perhaps it was a coincidence of history. While public administration reform rose in western countries, the Chinese government launched administrative reform at the same time. In March 2013, "Plan of Institutional Reform of the State Council and Functional Transformation" was released, which was the seventh government agencies

[22] 521 U.S.399（1997）

reform since the reform and opening-up of China. The goal was to promote transformation of government functions and to handle the relationships between government and market and government and society. Through streamline administration and institute decentralization, market was allowed to play a decisive role in the allocation of resources, so that market dynamic was stimulated and social creativity was mobilized. In September 2013, the State Council issued "Guidance on Government Procurement of Services from Society", explicitly requiring to gradually increase purchase intensity of basic public services like education, employment, social security, health care, housing security, culture, sports and disabled services through market mechanism, and non-essential public services could be handed to social forces if assumed proper through the commission, contracting, procurement, etc. At present, China has gradually developed privatization in public administration fields such as water supply, electricity, heating, public transport, sewage treatment, garbage collection, landscaping, sanitation, mail delivery and skills training. It is more and more common for private parties to participate in public administration.

Privatization of public administration also sparked concerns about private administrative accountability from public law scholars. Professor Qinwei Gao appealed for modern administrative law not only exploring how to limit discretion and responsibility of the executive but also exploring the phenomenon of "aggregation responsibility" produced after privatization, especially how private entities are responsible and responsive. Indeed, in the era of economic globalization and administration democratization, when the executive achieves public interest objectives more through non-mandatory contract originally belonging to private domain, and when private replaces the executive and performs public functions traditionally exclusive to the executive in part of domain, it is time for public law scholars to appropriately draw from exclusive focus on the executive. How to build an effective liability mechanism regulating private exercise of public authority is an important mission for contemporary public law scholars and especially administrative law scholars.

The US courts prudently expand application of state action standards to give private entities public law obligations, which have reference to the construction of private administrative accountability mechanism in China. The author believes that may face the following three important issues.

4.1 Judicial Review Standard for Private Conduct

New Administrative Procedure Law in China regulates standard for private entity that fulfills public functions to assume administrative duties, which is administrative body standard. That standard requires the body must be the executive, staff of the executive or organizations authorized by laws, regulations and rules. Although that standard is proper for the current status of the legal system and is workable, predicament still exists. Private entity performs public functions obtaining in the absence of laws, regulations and rules and infringes on others' legal rights, which could not obtain relief through administrative proceedings. For example, in the utility sector, governments franchise concession of water, electricity, gas, heating supply to businesses. When those businesses infringe on legitimate interests of consumers, they seek civil relief in accordance with Chapter 10 of Contract Law rather than administrative litigation. Relations between companies and consumers become rights and obligations of civil law rather than of administrative law. Administrative law cannot be applied in utility companies. The author suggests using U.S. public function test for reference. As long as private entity fulfills important public functions, they can be judicially reviewed.

4.2 Use Traditional and Non-Traditional Accountability Mechanisms Simultaneously

Privatization will result in a net loss of accountability. Anxiety of traditional administrative law for private administration will lead automatically to inclusion of private administration into judicial review and expansion of public law norm to constrain private body or directly deny authorization for private, which incorrectly considering private entities as source of accountability deficit. Exclusive focus on traditional accountability mechanism- judicial review- will also lead to ignorance of possibility of other alternative accountability mechanisms. Without careful consideration, administrative law scholars should resist the impulse of constraining private body as the executive. What's more, an accountability mechanism proper for uniform application in private administration does not exist. The mechanisms should be diverse, pluralistic and with sub contexts. In addition to judicial review mechanism, other non-traditional accountability mechanisms are able to maintain accountability of private administration to a certain extent, such as regulations from private laws like tort law, corporate law, antitrust law, securities law, regulation from free market competition and third-party regulations from insurance companies, banks, loan companies. Third-party regulation plays an important role in responsibility of private prisons in the US. For example, as a condition of loans or insurance policies, prison guards and officials are required to receive training by bank or insurance company or to develop a detailed management plan.

4.3 Consider Both the Responsibility and Benefit of Private Administration

The executive outsourced certain administrative tasks to private actors, offering relatively high efficient and high

quality services with relatively low costs and meeting the changing needs of the public. Administrative law scholars need to weigh the net benefit from greater responsibility of private administration and net loss from private administration benefits, if putting too much public law obligations on private parties will lessen the costs and benefits from private administration. Between private administrative responsibility and benefit, there is a certain tension. Role of the private body in public administration should not be simply constrained. The author proposed that public law norms set the goal of promoting and guiding private administration. The framework of private administrative responsibility would be adhering to the main role of private law regulation, market regulation and third-party regulation, with judicial review supporting necessary assistance, to achieve maximum benefit with a minimum of public law limits.

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