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Infusing Public Law into Privatized Welfare: Lawyers, Economists, and the Competing Logics of Administrative Reform

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Along with the trend toward "New Public Management" (NPM) and replacing the legal culture of public bureaucracies with market logic through privatization, we are also witnessing instances of "publicization," the application of public law norms and mechanisms to privatized services. The article explores the role of government lawyers and economists in the dynamics of these administrative reforms. Using a detailed case study of welfare-to-work reform in Israel, it shows that the reconstruction of decision making and accountability patterns under NPM was the result of competing efforts by these professional groups to appropriate the "privatized state" to accord with their own institutional logics and interests. While economists advanced a "market" logic, lawyers tried to reproduce the logic of "law" in the post-bureaucratic setting. The study demonstrates how eventually public law norms were re-infused into privatized welfare as a result of the increasing institutional power of the lawyers in the regulatory space, along with wider political and social support for the entrenched legalistic mechanisms of the administrative state. However, in addition to the "battle of norms" between lawyers and economists, there were also concessions that led to the redrawing of the boundaries of public law along more functional, rather than formal, lines.

The practice of power and discretion by agents of the state—whether in government offices, courts of law, or welfare bureaus—has always been a source of potential contention (Kagan 1978, 2001, 2010; Mashaw 1983). Historically, public law provided the framework for both constituting administrative

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power and controlling it in the name of democratic values (Krygier 2002; Selznick 1969; Stewart 1975). However, the pivotal role of law in public institutions has been severely challenged over the years, first by the logic of professionalism, and more recently by the logic of the market (Adler 2003, 2006). Over the last three decades, we have witnessed the proliferation of New Public Management (NPM) reforms (Hood 1991), which strive to adopt market values and mechanisms in the delivery of public services and to re-conceptualize the state as "entrepreneurial government" (Osborn and Gaebler 1992). Privatized welfare, which is at the core of this study, has become a domain within which to experiment with these ideas (Brodkin 2007; Diller 2000; Gilbert and Gilbert 1989; Lens 2005, 2013).

The introduction of "market logic" into the governance of public services where, historically, the "logic of law" has prevailed is a source of tension which remains understudied in the socio-legal literature (Halliday and Scott 2010). While most of the literature emphasizes the fact that privatization devolves powers to actors who are beyond the jurisdiction of public law (e.g., Aman 2005; Minow 2003), a strand in the literature points to instances where the push toward privatization is pulled back by the application of public law to the private agents—what Jody Freeman terms "publicization" (Freeman 2003. Also see Rosenbloom and Piotrowski 2005). Such instances of publicization are documented in empirical studies, for example, in the fields of privatized utilities (Prosser 2000), privatized prisons (Feeley 2014), and privatized welfare (Benish 2010, 2014; Benish and Levi-Faur 2012; Mulgan 2000).[1] Nonetheless, little is known about what might explain privatization and publicization dynamics and the forces and agents that drive them.

The article explores the roles of government professionals—lawyers and economists—in the privatization-publicization dynamics, and considers how they influence the trajectory of NPM reform in terms of accountability and decision making structures. Theoretically, the article builds on the socio-legal literature on the organization of administrative decision making systems (Adler 2003, 2006; Kagan 1978, 2010; Mashaw 1983) and on the sociological and socio-legal literature on new institutionalism and institutional logics (Edelman et al. 2001; Friedland and Alford 1991; Gilad 2014; Talesh 2009, 2015; Thornton and

[1] Similarly, in a central study on the effects of NPM, Pollitt and Bouckaert conclude many states resisted the pull toward market-like public governance by favoring traditional law-based administration (what they call a neo-Weberian model). This trajectory, in which privatization is accompanied with regulatory growth, connects with what Levi-Faur (2005) calls "regulatory capitalism".

Ocasio 2008). Empirically, it builds on a detailed case study of the Israeli welfare-to-work reform, which, inspired by welfare reform in Wisconsin, started as a radical experiment in privatized and incentive-based welfare governance but underwent a significant shift back to law-based governance.

The contribution of the article is twofold. First, while prior research on administrative justice in socio-legal scholarship has focused almost entirely on public agencies (Halliday and Scott 2010; Kagan 2010), this article sheds light on the organization of decision making and accountability under privatized and marketized forms of governance. Second, it recognizes the unique role of government lawyers and economists in the process of reorganizing accountability and decision making under NPM. By tracing their roles in the policy process, it provides an empirical observation on the competing, and at times conflicting, "institutional logics" of the lawyers and economists on what constitutes appropriate governance of privatized welfare. In doing so, it illustrates the active role lawyers and economists play in the diffusion of the logics of "law" and the "market" across the traditional public/private boundaries as they attempt to appropriate the "privatized state" to accord with their own institutional logics and interests. The article also shows how changing power relations and unfolding distrust of the contractors' decision making ultimately advanced the legal logic of governance, a move led by government lawyers after gaining the support of other actors in the regulatory space.

The article starts with a discussion of decision making patterns in the public sector and their transformation with the shift to NPM, focusing on shifting sources of public and political legitimacy. The following section introduces the notion of "institutional logics" as a prism through which to study the role of government professionals in the design of new decision making patterns. After accounting for the methodology of the study, it shifts to the empirical case: processes of privatization and publicization of the Israeli welfare-to-work reform. This is followed by a discussion of the ramification of these dynamics on the trajectory of the reform, and more broadly, on the agents and mechanisms of publicization affecting NPM reforms.

Dynamics of Change in Administrative Decision Making Systems

How are administrative decision systems organized? Kagan (2001), in his seminal work on *adversarial legalism*, provides an illuminating typology of administrative decision making. Building

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on Mashaw (1983) and others, he differentiates between *formal* (or *legalistic*) systems of decision making and *informal* ones (Also see Barnes and Burke 2015). In the legalistic models, decision making is structured by, and expected to conform to, written legal rules. Within this category, Kagan identifies systems of *bureaucratic legalism* (connoting Weberian notions of a hierarchal bureaucracy that emphasizes unitary application of centrally devised detailed legal rules) and systems of *adversarial legalism* (in which the decision makers act like referees and allow various parties to engage in a participatory process by presenting arguments and evidence, often with the aid of lawyers). In contrast, in the informal models, decision makers are granted more discretion. The hierarchal version of such systems is the *professional* or *political judgment* model, in which decision makers are granted discretion due to their expertise or political legitimacy. The more participatory model is the *negotiation* or *mediation* model, in which decisions are not structured by rules but made through dialogue.[2]

In a recent article, Kagan (2010) develops his theory by asking *why* political systems adopt one or another model of decision making. He particularly stresses the role of *political mistrust* as an overarching factor that catalyzes adopting or moving to a more formal and legalistic system of decision making (on the dynamics of trust development, see also: Lewicki and Wiethoff 2000). According to Kagan, faith in the public officials' expertise *inclines* policy makers toward an "expert judgment" model of case-by-case decision making. However, if faith *declines* after a negative experience, as often it does (or if it is absent from the start), policy makers will tend to impose a formal and legalistic decision system on an agency by using bureaucratic or adversarial forms of legalism. Kagan also points out that informal and discretionary front-line decision making processes are often reshaped over time on more legalistic lines, as second-phase appeal systems (such as administrative tribunals or courts) that review street-level decisions tend to add additional formalistic requirements to the decision making processes (see, e.g., Melnick 1993; Neal and Kirp 1986; Nonet 1969).

The organization of American welfare agencies' decision making procedures demonstrates Kagan's theory. Historically, the American public administration followed legalistic models of decision making. In order to realize the "rule of law" (Krygier 2002),

[2] Kagan's models are ideal types. In the real world, many administrative decision systems combine elements of two or more types. Moreover, there are varieties between sectors and between countries. For the varieties in administrative decision making systems in the context of welfare see Jewell (2007).

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administrative law was established to ensure public agencies act within the bounds of their statutory authority and comply with legal values of due process. In 1935, during the New Deal era, when the American Federal government enacted the AFDC together with other social welfare projects, the law-based model of administration was deemed inappropriate. Its rigidity and intolerance to any sort of discretion were seen as incompatible with the complex and sensitive task of addressing the needs of the poor. Therefore, welfare agencies were designed according to the professional model of decision making, in which social workers, perceived as experts in assessing human needs and determining efficient ways of intervention, were assigned as the eligibility officers of social assistance (Brodkin 2007; Diller 2000; Jewell 2007; Simon 1983). However, in the late 1960s, the social work model came under attack from both liberals and conservatives. Liberals attacked case workers' discretion on the grounds of equity, pointing out that it was often exercised in patterns that disadvantaged racial minorities. Liberal advocacy groups regularly challenged discretionary decisions and policies in courts; for their part, the courts required agencies to establish "due process" hearing procedures (Melnick 1993). At the same time, conservative politicians saw social workers and their do-gooder ideology as being too soft-hearted toward welfare fraud. Interpreting this as a threat to fiscal control, they enacted more detailed rules and mandated administrative audits designed to constrain front-line officials' discretion and encourage more stringent decisions (Brodkin and Lipsky 1983). As a result, the professional model of welfare agencies gave way to legalistic forms of decision making—both bureaucratic and adversarial.

In the last three decades, we have witnessed a new stage in the organization of administrative decision making. During the 1980s, a new form of critique and illegitimacy came to the fore with the rise of conservative politics and its aggressive critique of public sector management. The legalistic and professional systems of decision making have both been criticized as inefficient, unresponsive, cumbersome, paternalistic, self-serving and fiscally irresponsible (Clarke and Newman 1997; Jewel 2007). This criticism, sometimes coupled with a broader neoliberal agenda of economizing the social realm, was the trigger for a host of administrative reforms seeking to infuse private sector culture and practice into public services. Under titles such as "new public management" (Hood 1991) and "entrepreneurial government" (Osborn and Gaebler 1992), these reforms pushed for privatization and other market type mechanisms in the belief that they would boost efficiency, decrease public spending, and increase the responsiveness of public services.

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Adler's theoretical framework (2003, 2006) provides valuable insights into the implications of these administrative reforms on the design of accountability and decision making systems. Adler suggests that in the post-NPM era, three additional models organize and legitimize decision making. The *managerial model*, which mimics the corporate "bottom-line" culture, grants service agencies' managers wide discretion in terms of how they deliver their services as long as they meet the outcomes established by the policy makers. The *consumerist model*, which mimics the market culture of customer satisfaction, introduces "consumer charters" and provides clients with "voice" mechanisms together with the possibility of compensation if the standards in the charter are not met. And the *market model*, which mimics market competition, makes decision makers more responsive to customers' preferences by providing customers with an "exit" option. In addition, in contracting out, decision makers are made more conscious of efficiency and cost saving because of their commitment to the interests of their shareholders.

Here again, welfare administration serves as a good example of the shift toward market-like organization of decision making. With the welfare policy reforms in mid-1990s in the direction of "welfare-to-work" (or "workfare"; see Diller 2000; Handler 2004; Jewell 2007), the implementation of these programs required new organizational capacities going well beyond the benefit-processing capacities of traditional welfare bureaucracies. In that sense, these reforms were ideally suited for experimenting with the ideas of entrepreneurial government. As a result, many American welfare programs have shifted away from the legalistic model of welfare governance, "shorn of the rules and procedures" that characterize legalistic systems of accountability (Diller 2000), and moving toward privatization and business-like forms of welfare governance (Brodkin 2007; Gilbert and Gilbert 1989).

As mentioned above, in some instances, the push toward privatization results in a pull back to legal values and mechanisms in the governance of decision making and accountability. However, current scholarship on publicization is mostly normative, and the limited empirical evidence tends to provide "snapshots" of privatization and publicization, leaving the dynamics of publicization unaddressed and under theorized. Little is known about what the *dynamics* of reorganizing decision making under NPM are, and it remains an open question *why* public law values and procedures are sometimes reinfused into service providers after privatization. In order to address these questions, the next section introduces the notion of institutional logics and the role of professionals as

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agents of privatization and publicization in administrative reforms.

Institutional Logics, Professionals and the State

Institutional logic is the socially constructed, historically patterned collection of practices and symbols (including values, believes, vocabularies, and scripts) that organize social action in a specific domain (e.g., Friedland and Alford 1991). The concept of institutional logics originated in the sociological literature on organizational institutionalism. Initially, in what is known now as "old" institutionalism (Selznick 1996), institutional theory focused on the process by which formal organizations develop distinctive procedures, strategies, and competences based on organizational functions, cultures and environments, as well as changes in the composition of the organizations' personnel, their interests, and their informal relations (Selznick 1969). "New" institutionalism has continued to explore these processes of institutionalization but has changed the focal point of institutional theory by bringing legitimacy, culture, and cognition to the forefront of institutional analysis (Alford and Friedland 1991; DiMaggio and Powell 1991). In the new institutionalism, attaining legitimacy is the main motivation of organizational actors. As a result, processes and procedures of decision making penetrate organizations and spread across sectors, as organizational actors conform to cultural definitions of propriety in order to promote the organization's legitimacy (DiMaggio and Powell 1991; Meyer and Rowan 1977). In addition, new institutionalism points to the role of cognition in the process of institutionalization, emphasizing how patterns of action become taken-for-granted (DiMaggio and Powell 1991).

The institutional logics perspective further develops these ideas, arguing the values, interests and assumptions of individuals and organizations are embedded within predominant logics which, in turn, represent frames of reference that guide actors' sense-making, the vocabulary they use, and their sense of identity (Thornton and Ocasio 2008; Thornton, Ocasio, and Lounsbury 2012). In that respect, institutional logics mediate macro structures and micro behavior by providing individuals with distinct modes of "conscious reasoning" that affect their decision making and actions (Suchman and Edelman 1996).

The institutional logic concept has been used by socio-legal scholars to explore the role of professionals (usually lawyers) as active agents in the diffusion and translation of specific logics between organizational settings (Edelman et al. 2001; see also Gilad 2014) and to demonstrate how conflicting logics or values

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that stakeholders bring into regulatory processes can organize different legal orders (Talesh 2009, 2015). In this article, we extend the use of the concept of institutional logic in socio-legal scholarship to the field of government professionals. The institutional logic of senior state officials is constructed by professional education, professional experience, and organizational socialization in state agencies with specific functions, goals and interests (Mosher 1978; Skocpol 1985). Since the state is a complex and heterogeneous field, different and sometimes competing professional institutional logics coexist and interact (e.g.,Alford and Friedland 1985; Carruthers 1994).

We focus on two of the most powerful and widespread groups of professionals in modern public bureaucracies—lawyers and economists (Dezalay and Garth 2002). Lawyers' expertise in the inner workings of the bureaucratic machinery and the proceedings of judicial reviews has made them pivotal in the operation of the administrative state (Dezalay and Garth 2002). Accordingly, legal professionals have become an integral part of virtually all state agencies They are involved in public policy design and implementation, directly or indirectly, whether through reviewing, interpreting, counseling, drafting, negotiating, or litigating public policy in myriad areas of the government's business, including the area of public welfare. Government lawyers tend to develop a culture of rule application and rule interpretation (Kagan 1978), and according to some studies of American agencies, staff lawyers tend to push for more legalistic enforcement strategies than those preferred by agency engineers, scientists, or economists (Kagan 2010; Melnick 1983).

The socio-legal literature on the role of lawyers in the private sector provides some important insights on the institutional logics of legal professionals and their practices as a professional community. In discussions of the role of lawyers in the private sector, two images are frequently invoked: first, lawyers as agents of "rights consciousness", engaged in the diffusion of legal knowledge and practice in a way that empowers employees vis-à-vis their employers; second, lawyers as "compliance professionals," engaged in framing (and sometimes inflating) the risks posed by law to private organizations (Edelman 2004; Gilad 2014). According to this literature, lawyers are mediators, that is, agents translating the logic of law from the public to the private sector via emblems such as "due process," adversarial litigation and antidiscrimination procedures and mechanisms (Dezalay and Garth 2011; Edelman 2004). By so doing, lawyers project their professional orientation and experience as agents of public interest law—responsible for the checks and balances on administrative power for the sake of individual rights—into private domains,

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thereby appropriating the latter to accord with public law rationale.

If legal professionals are the prototypical agents of the administrative state, then economic professionals are the main agents in the current shift toward an entrepreneurial neoliberal state. The rise of economic technocrats is intertwined with the rise of neoliberalism, its inherent critique of the administrative welfare state, and its economic and social policies (Dezalay and Garth 2002; Fourcade 2006; Fourcade-Gourinchas and Babb 2002; Mandelkern 2015). The necessary know-how to reform and manage the public sector has shifted toward bureaucrats with backgrounds in economics and business administration. Their authority stems from mastering potent policy and governance ideas, as well as their occupation of central and powerful positions within the apparatus of the state (Mandelkern 2015).

The economic logic is based on academic education, as well as on-the-job training and economic commonsense. It may diffuse from economists and economic agencies via practices and instruments of fiscal probity, that is, keeping a balanced account, conducting instrumental cost-benefit calculation, and maintaining a deep faith in market dynamics as an efficient, moral and just mechanism to allocate resources and set prices (Lebaron 2001). Economic agents follow the logic of the market and strive to replace "artificial" state interventions by retrieving the "natural" order of incentives—understood as the rational "cornerstone of modern life" (Levitt and Dubner 2009).

The next sections center on the interaction between these government professionals and the struggle between their competing logics in the privatization–publicization dynamics. By utilizing an in-depth analysis of the Israeli welfare-to-work reform, we demonstrate how it alternated between legal and economic logics, each logic dominating different stages of design and implementation.

Methodology

The main empirical sources of data for the research include 27 semi-structured interviews with key actors and other informed participants in the policy process, as well as the analysis of numerous policy documents. The research was triggered by previous comprehensive research projects taken by the authors to explore various aspects of the design and implementation of welfare to work reform in Israel. One of the most intriguing findings of this work was the significant publicization that followed privatization (on which both authors have reported elsewhere; see

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Benish 2014; Maron 2014). This led to the current research, which focuses more specifically on the driving forces and internal dynamics of publicization.

To better understand these dynamics, we returned to the 74 interviews conducted between 2007 and 2011 for our previous work. We divided them into those with street-level agents at the job centers and the administrative tribunal (a large portion of our previous work, but irrelevant to the current research question) and those with higher level informants directly involved in the policy process of designing and reforming the program at the policy level. The latter group included 15 interviews with government officials and advocacy organizations; all are included in the analysis. These interviews indicated the accumulative process of publicization of the program and signified the central role of lawyers and economists. To grasp a fuller picture, in 2012 and 2013, we conducted 12 additional interviews with former and new interviewees involved in key points of the design and reform of the program at the policy level. In these interviews, we centered on questions on the details of the policy process leading to publicization and on the positions and views of the different actors, with emphasis on lawyers and economists. These interviews allowed us accumulate exhaustive information on the internal and external dynamics of the process of publicization. The overall sample of 27 interviews included: lawyers from the Ministry of Justice and the Ministry of Labor; economists and lawyers from the Ministry of Finance; administrators from the Israeli Public Employment Services and the National Insurance Institute; lawyers and economists in the program's regulatory agency; lawyers from the Legal Aid department at the Ministry of Justice; activists and lawyers from welfare rights advocacy organizations; members of relevant public committees; and the chairs of the program's administrative tribunals. The appendix details interviewees' positions and roles.

Another important source for data was policy documents related to the initiation of the program, its enactment, the processes of contracting out and establishing the job centers and the stages of implementing the program. This included: the legislative documents relating to the enactment of the program and its amendments; the tender and contract documents; protocols of relevant parliamentary committees; reports of the state comptroller and public committees; petitions, appeals and reports of advocacy organizations; decisions of administrative tribunals and courts; policy documents of the regulatory agency; and press releases and newspaper articles.

In the analysis stage, following our research questions, we sought to model the publicization process and to trace the logics

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of lawyers and economists in this process. To this end, we conducted a two stage coding process. First, to model the trajectories of the privatization-publicization process over time, we employed the "process tracing" method (Collier 2011). This method is based on describing each step in the trajectory adequately, thereby permitting the analysis of change and sequence. Using open coding, we reviewed the policy documents and the transcribed interviews to trace and characterize the key events in the process of privatization and publicization. We categorized the content into four areas: the decision to privatize the program; the dynamics of designing the case managers' role and their decision making procedures; the formation and revisions of the contractors' payment model; and the establishment and operation of the administrative and judicial review system. This analysis provided a detailed account of the publicization process.

After establishing the trajectory via process tracing, in the second stage of coding, we shifted our attention to the driving forces of publicization and the roles of the lawyers and economists. We systematically reviewed the official reports, protocols and interviews to locate the views of the lawyers and the economists on the purpose and meaning of privatization in the four areas mentioned above. We generated a copy of the coded excerpts of these views and conducted a second level coding. By identifying patterns in the lawyers' and the economists' framing of the problems underlying privatized welfare and their solutions to these problems, we aggregated the codes into the thematic clusters of the "logic of law" and the "logic of market," along with more general themes, such as "trust/mistrust of the contractors," "turf relations" and "compromises." We paid particular attention to identifying the instances when these logics diverged or were in agreement, seeking to understand how the interactions between them played out and propelled the process of publicization. The rich documentary materials and the thick descriptions in the interviews allowed us to gauge the policy actors' informal and interpretative perspective of the events and enabled us to a triangulate the data between sources.

Designing and Implementing the New Governance of Privatized Welfare

The Preliminary Stage: Domination of Market Logic

During the 1990s, rising unemployment, as well as increased spending on social assistance and unemployment insurance, focused public and political attention on the need to reform the Israeli Public Employment Service (PES). Senior bureaucrats

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and politicians attributed the soaring rates of unemployment to deficiencies in the PES operation and the incompetent execution of the "employability test" to determine eligibility for social assistance and unemployment insurance. An informal, yet significant, deliberation developed among senior bureaucrats from the Ministries of Finance, Labor, and Justice, who agreed to test the applicability of a welfare-to-work policy. In 2000, the Minister of Labor and Welfare appointed the Tamir Committee (named after its chairman) to design a welfare-to-work policy experiment.

Alongside far-reaching changes in social policy, the report advanced a paradigmatic change in the logic of welfare administration and governance (Maron 2014; Maron and Helman forthcoming). Based on similar reform in the state of Wisconsin, the committee's report recommended using job-centers as a main policy instrument and delegating the operation of these centers, including the execution of the employability test for income support benefits, to non-state agencies (Tamir 2000). The government lawyers accepted the Treasury's criticism of the PES and did not oppose privatization *per se* (interview 5). This stance of the government lawyers was not trivial. The MoJ senior lawyers had opposed an earlier attempt by the Treasury, in 1997, to privatize the PES functions based on the argument that such privatization might be an unconstitutional delegation of governmental power (interview 18). The acceptance of privatization by the most important legal "gate keeper" opened a window of opportunity for the Treasury to push for the governance reform it was seeking.

However, the MoJ lawyers' acceptance of contracting out came at a price: subjecting the decision making procedures of private contractors' employees to reviews by administrative tribunals and Labor courts, similar to the review of PES case workers' decisions. In their view, this satisfied the constitutional demands and counter-balanced the risks of privatized discretion (interview 5). The Treasury did not oppose these demands (interview 9), but at the same time, the Treasury strove to design the administrative tribunals along professional rather than legal lines, so the members of the administrative tribunals would have employment and welfare expertise, with a legal expert serving only as advisor.

Notwithstanding the agreement on the accompanying redress mechanisms to privatization, a major conflict arose on another issue: the contractors' payment scheme. The Tamir committee recommended using a cost-plus model, which would reimburse the contractors for their expenses and secure them a fixed *a-priori* profit. The economists strongly opposed this model. In their view, the

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purpose of the payment scheme should be to create an "alignment of interests" between the contractors and the state (interview 13). Since they perceived the contractors as rational economic actors, they believed that if their profits were secured, they would lack the incentive to meet the program's goals. In their view, goal alignment could be achieved only if the contractors bore (or at least shared) the risks incurred by not meeting the policy objective of reducing public expenditure on welfare (interview 8). Therefore, they suggested payment should be based on an outcome-based model, with the contractors paid according to the decrease in welfare payments in their region. The lawyers in both the Justice and the Labor Ministries opposed this payment model, arguing it might create perverse economic incentives and lead to unethical behaviors that would endanger participants' entitlement to welfare benefits (interviews 5 and 8). These conflicting concerns about the design of the payment model in the policy process were well summarized by one interviewee:

> [A] way to make sure that the contractor will behave ethically is to use a "cost-plus" model, that is, to make him indifferent to the cost of the benefits and to the operational efficiency of his business…each benefit that is paid, the Treasury pays it, and you as the director of the business do not gain or lose anything. You get some kind of overhead…[O]n the ethical level this provides a good solution. On the economic level this is a disaster: If you are indifferent to the payment of benefits, why would you move it to the contractor in the first place? The whole idea is to create the right economic incentives… [if paying benefits] has no economic impact on the contractor, we are counting on the contractors' ethics to save money to the Treasury… You cannot expect economic entities to do that. (Interview 9)

When the lawyers suggested using other outcomes measures, such as job placement and job retention, rather than reductions in welfare payments, these propositions were rejected by the economists. In their view, job placements are hard to measure and easy to manipulate, while the measurement of reduction in income support payments "is easy to measure and is not subject to manipulation. In the long run it creates good incentives because if you [the contractor] sanction a participant he returns, but if you place him in a job he is not coming back. It is a very simple model, and this is a positive thing" (interview 17).

Eventually, despite the lawyers' objections, the government accepted the Treasury's incentive-based model with minor amendments, upholding the decrease in welfare payments as the

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pivot of the model (Gadish 2004).[3] Although the MoJ lawyers were involved in the process of designing the payment scheme and even had a formal power to veto the payment model, they did not use it, in spite of their strong reservations. When asked about it, one explained that while they understood "the economic model is the real regulation" of the program, once the discussion turned to payments and incentives, they felt matters were "out of their territory" (interview 5). He elaborated:

> Eventually, the involvement of the MoJ had no impact on the economic model, I mean, we did not think we are economists and that we can really have a say…at that stage it seemed that measuring placements is very, very difficult, that it creates a serious problem, and therefore [the economists] argued that the only viable way is to measure the savings on benefits.

Another important issue was the institutional design of the regulatory structure of the program. Once again the economists took the lead. They believed rule-based regulation should remain minimal to enable the contractors to develop innovative and individually tailored services. Further, they considered most of the steering of the program could be done through the outcome-based model of the payment scheme (interview 17). As a result, the Treasury devised a small regulatory agency with only a few public officials and limited organizational capacity (interview 16).

Eventually, the enabling legislation was enacted in 2004; it provided case managers with vast discretion in doing their job, and up until the inauguration of the program, rule-based regulation of operators' decision making was almost absent. One salient exception was the unwillingness of both the economists and the lawyers to give contractors any discretion to exempt participants from showing up at the job centers or to decrease the required hours. Since they feared such discretion might be used opportunistically by the contractors, this issue was regulated by detailed rules; the final decision on every exemption or any decrease in hours was left to the regulatory agency itself, particularly so in the more advanced stages of implementation (Maron 2014).

[3] The program's economic model was based on the following payment scheme: (1) incentives to cut back expenditure on social assistance benefits providers are rewarded for cost saving beyond the 30% threshold, and additional bonuses for decreasing the number of beneficiaries (per closed case without further claims for nine months); (2) full reimbursement of work supporting services spending (up to 23 million NIS) with incentives to decrease spending (providers are rewarded with 5% of the savings); (3) state sponsored founding grants to establish new job centers (10 million NIS) and operation expenditure (up to 35 million NIS).

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Therefore, market logic took the lead in designing the program's governance model. This is apparent in the privatized, incentive-based and outcome-oriented model of management, the relatively small regulatory agency and the wide discretion given the job centers and their personnel in carrying out their tasks. Notwithstanding the centrality of the market logic, some legal mechanisms of judicial review and subordination to public law values were made part of the infrastructure of the program during the design stage. As we shall see in the next section, the apparently minor legal counterweights to the market logic significantly increased in scope and effect during the implementation of the program.

The Implementation Stage: The Resurgence of the Logic of Law

During its first year of operation and throughout the implementation of the program, the regulatory agency dealt with a host of unexpected problems emerging at the street level, along with growing popular disapproval of the program. In fact, the program became the target of widespread public criticism by advocacy organizations. Advocacy organizations criticized the so-called "privatization of the state" and its adverse effect on participants' social rights (RHR and MDRND 2008). In the media, recurring stories talked about the hardships of the program participants and the accusations of participants and advocacy groups of mistreatment by contractors' workers (e.g., Rapaport 2006). These accusations were frequently linked to the programs' payment model and to the contractors' economic interest in decreasing the welfare rolls (Benish 2014).

Over time, the problematic nature of the program's payment model and its potentially adverse effect on participants' rights were acknowledged in official reports. For instance, a report of the State Comptroller stresses that the program's payment model apparently "creates a *structural conflict of interest* between the economic considerations of the firm and its obligation to work in the interest of the participant" (emphasis added; The State Comptroller 2007: 40). Similarly, a report of a public committee of the Israel Academy of Science and Humanities, asked by the government to evaluate the program, emphasized: "When most of the financial risk is imposed on them [the contractors] we should expect more vigorous activities of the contractors to score high compared to the performance indicators, and that might come at the expense of safeguarding the rights of the participants" (IASH 2007: 92).

In response to the mounting public and political pressure, the regulatory agency was pushed to provide answers and put

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forward policy solutions. At this stage, the legal professionals in the agency took the lead as the agency's main problem solvers. They often used their juridical toolbox to respond to the policy problems and to manage the public backlash to the reform. Throughout implementation, the logic of law—legal values, practices and mechanisms, as well as problem solving strategies—became prominent in structuring the actions of the agency. This triggered processes that enhanced the legal orientation of the regulation of the program, resulting in significant changes in its overall governance structure: a decrease of market-like mechanisms and fortification of legal mechanisms.

A remarkable empirical illustration of the trend toward legalization is the increasing rule-based regulation of the contractors' decision making. The program started with almost no rule-based regulation of the day-to-day conduct of the job centers in order to maximize contractors' managerial flexibility and street level discretion. Yet over a period of about three years, the regulatory agency issued numerous mandatory regulations, ultimately leading to the creation of a 180-page operating manual. These regulations continually structured and narrowed the contractors' day-to-day discretion in matters such as referral to jobs, educational and vocational training, eligibility to daycare and transportation services, community service, sick leaves, and sanctioning procedures (Benish 2014; Maron 2014). The first head of the regulative agency explained:

> We had to verify the contractors' reports and then provide solutions in the form of legislation and by defining new formal procedures. The rules must be made by the state – and implemented by the providers. (Interview 20)

The legal advisor of the regulatory agency described the unfolding of this process:

> Step-by-step the procedures increased and accumulated. Each incident or case was followed by board meetings in which representatives of all job centers were present. We would raise all sorts of issues that were flagged by various actors. When we recognized a situation that deserves a solution we would try to figure out how to solve it and publish a regulation. Each time there was a new regulation, and regulation, and regulation, and regulation. (Interview 2)

A good example of this dynamic is the regulation of job centers' case managers' decisions to sanction participants. At first, the legal framework, as designed in the enabling law, required case

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managers only to explain disentitlement decisions in writing. However, six months after the program started, after the labor court judges, in a conference with the agency, raised concerns about the fairness of the sanctioning process, the head of the regulatory agency issued a new regulation, stressing: "[I]n any case of a decision that disentitles a benefit (due to refusal to work or breach of the personal program) or any other substantive decisions (such as decision not to allow work support services or not accepting a medical document) the case managers should conduct a hearing"(Program's Regulatory Agency 2006).

Since the regulations did not specify how the notice and hearing should be conducted, contractors gradually developed different interpretations. The state comptroller identified and criticized these as *inconsistencies* (State Comptroller 2007: 17), leading the agency to further revise the due process regulation into detailed, three-page instructions on when and how to conduct the hearings (Program's Regulatory Agency 2009: 117–119). The following exchange demonstrates the logic of this requirement:

> Q: Why did you add the hearing requirement?
>
> A: It is appropriate administrative conduct… [T]he hearing requirement is all about appropriate administrative conduct.
>
> Q: What guided you in designing the regulation?
>
> A: When it comes to the right to hearing it was clear that it should be a structured and uniform hearing to everyone … When you understand that the case managers give the participant a "participation certificate" and that the lack of such certificate might lead to the disentitlement of income support benefit, it is impossible to do that without some kind of a procedure that hears what he has to say and gives him an opportunity to respond. This is appropriate administrative conduct. It's the same thing as I'll tell everyone who works at the Ministry of Labor. He cannot make a decision without giving the person the opportunity to argue against it. (Interview 2)

These due process mechanisms, which went beyond the requirements in the law, significantly proceduralized the case managers' decision making processes, eventually leading them to dedicate much of their time to carefully documenting every interaction with every participant in the program (Maron 2014).

Another central element in the trend toward legalism is the juridification of the administrative tribunals. As mentioned, the MoJ lawyers demanded the installation of administrative

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tribunals as a central measure to counter-balance the effects of privatization. In the legislative stage, under the Treasury's pressure, the tribunals were designed to operate according to employment and welfare professional expertise. However, during implementation, these tribunals underwent a significant process of juridification. Welfare rights advocacy groups and the labor courts were central agents in this process. The advocacy groups encouraged participants to use the redress mechanisms, offering technical assistance and sometimes even representation by qualified lawyers at the tribunal sessions (interview 12). These lawyers repeatedly demanded the subordination of the case managers' decisions to administrative law standards and the management of tribunal sessions according to formal due process standards. When tribunals rejected these demands, the advocacy groups' lawyers appealed to the labor courts, who, in a series of decisions, held that case managers must comply with administrative law and tribunal sessions must be conducted in a court-like manner. As a result, "over time these tribunals became more and more legalistic, and who actually ran them were the legal advisers" (interview 19).

An important step toward juridification was the decision to provide lawyers to participants in their appeals to the administrative tribunals. This step was proposed by advocacy group lawyers, three months after the program was initiated. Given the inability of participants to pay for legal representation and the fact that the job centers were represented by lawyers, they argued that "the absence of legal aid for the program participants in the administrative tribunals breaches their constitutional right for fair hearing" (Community Advocacy 2005). This proposal was quickly embraced by the MoJ and the lawyers at the regulatory agency (interviews 5 and 11); after the Israeli Bar opposed the initial idea of providing such representation by paralegals, the MoJ pushed for the use of its Legal Aid department. Initially, the Treasury opposed this idea on the grounds of cost (interview 7), yet given the increased public criticism of the programs' unfairness and the support of such representation by the State Comptroller and other public committees, the Treasury was compelled to consent, and the Legal Aid Act was accordingly amended in February 2008. The Bill emphasized the "great importance that the administrative tribunals … operate in a way that will enable them to safeguard the participants' rights" (Legal Aid Act, amendment 8, 2007). In this respect, program participants enjoyed better legal protection than welfare recipients who were sanctioned by the unprivatized PES; for the latter, the right to representation was limited to the labor court stage.

Once the legal aid lawyers started to represent participants at the tribunals and the courts, they advanced legal arguments

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that triggered greater legal regulation of the case managers' decision making. This is well documented in a report of the legal aid department, giving a detailed account of numerous cases in which lawyers from the department appealed decisions of case managers based on legal arguments, such as discrimination among participants based on ethnicity, breach of rights of disabled participants or other forms of unlawful conduct by the job centers' case managers (Department of Legal Aid 2010).

Another important development was the revision of the economic model of the program. The fact the program's payment model was linked to a decrease in welfare payments attracted much public critique, and in several instances, including in a report of the State Comptroller, it was considered a potential source of a *structural conflict of interest* (State Comptroller 2007). In a petition to the Israeli Supreme Court against the extension of the program, advocacy organizations' main argument revolved around the economic model of the program and the constant conflict of interest between the job centers' private interest to maximize their profits and the protection of welfare recipients' rights (interview 12). In the government, the MoJ lawyers suggested and the Treasury agreed to slightly revise the economic model so contractors could not directly profit from the sanctioning decisions (although the focus remained on benefits reduction, not on job placement and retention) (interview 5).

However, the most radical revision of the economic model of the program followed the report of the government-appointed Dinur committee. The committee was appointed by a new Minister as a political effort to mitigate rising public criticism and an enormous number of complaints from program participants. The committee identified the program's economic model as one of the major sources of criticism (interviews 17 and 22). As a result, in its report, the committee recommended revising the program's economic model so payment to the contractors would focus on job placements, their quality and retention. For the first time, the Treasury's economists agreed to considerably revise the payment model. Although they still considered the reduction in income support payments as the most efficient, hard-to-manipulate performance measure, they acknowledged it was politically unsustainable. As the senior economist in the Treasury at the time explained:

> Now everyone agrees that the economic model was bad PR (public relations) to the program. It was an adequate model, but it was not smart. . .it made it easy for the programs' opponents to argue that all we wanted is to save money on

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> benefits. It did not help us to explain that we actually invest a lot more money in the program and that it costs more than it saves. (Interview 16)

Thus, while the market logic took the lead in designing the program, the legal logic dominated its implementation stage due to the increasing power of the lawyers in the regulatory space, following growing political mistrust of the contractors. As a result the Treasury's economists gradually agreed to the increased proceduralization of the contractors' decision making and to revise the program's economic model to uphold its legitimacy (interviews 26, 27).

Exploring the Dynamics of Administrative Reform

The Competing Logics of Welfare Governance Reform

The case study demonstrates the competing, and at times conflicting, institutional logics of government lawyers and economists on what constitutes appropriate governance of privatized welfare. Although not all economists and lawyers fit into "ideal types," the case shows that the economists, by and large, served as agents of market logic in the policy process. They emphasized efficiency and flexibility and pushed for incentives-based control of the contractors. The lawyers, on the other hand, generally served as agents of legal logic. They tended to put legal values such as legality and due process first and generally preferred rule-based and adversarial controls over the contractors and their workers.

Both lawyers and economists expressed *mistrust* in the contractors and emphasized the need for control. This is an important point, since the shift to contracting out and marketization is frequently associated with ideas of de-regulation and decentralization, which imply the weakening of central control. In the case study, the Treasury was not at all interested in lessening its control of welfare-to-work policy (Maron 2014). In that sense, both market and law are basically *low-trust* systems of governance.

However, the mistrust of the lawyers and the economists stems from different concerns. For the lawyers, the main risk of privatization was that delegating power and discretion to private decision makers could compromise the social and individual rights of welfare recipients. The lawyers' solution was to make private job centers accountable to legal values by treating them as public agencies. Although the government lawyers were willing to make some adaptations, and we will get back to this point below,

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the data indicate their sense of administrative law was deemed the appropriate "way of conduct" in *all* interactions between citizens and government agents—*public or private*. The lawyers accepted the profit motive of the contractors as a legitimate component of contracting out, along with contractors' alleged advantage in managing flexibly and efficiently, but they strongly opposed the idea that the contractors should have a direct economic interest in the outcomes of their street-level workers' decisions. In their perspective, such direct economic interest might create a conflict of interest—or at least the appearance of such conflict. That is why the lawyers pushed for sticking with a cost-plus pre-fixed profit model, in which such risk can be avoided, or at least minimized.

For the economists, the main challenge of privatization was how to ensure the provision of services would be efficient, goal oriented, and fiscally responsible. Their solution, inspired by private sector management techniques, was to align the contractors' interests with their interest of reducing welfare expenditure. They believed such goal alignment could be achieved only if the contractors bore (or at least shared) the risks of not meeting this policy goal. Therefore, they strongly opposed the cost-plus payment model. In their perception, if the contractors' profits were secured they would lack the incentive to meet the policy goals. It seems that for them, privatization without financial risk-sharing might merely reproduce the problems of bureaucracy. Moreover, economists have argued that incentives must be designed to create full congruence between the interests of the state and private decision makers, by minimizing attempts to manipulate performance measures to deceive the state.

These different normative sensibilities seem to stem not only from different perceptions of appropriate governance, but also from the different institutional interests of lawyers and economists within the government. The institutional role of the government lawyers, especially those in the MoJ, is to secure the legality of government actions and the protection of human and citizen rights. This is what they are institutionally held accountable for by the courts, the parliament and the media. Therefore, in the welfare-to-work case, they had an institutional interest in strengthening the contractors' legal accountability to minimize "legal harms" and to avoid the blame for such harms. They were much less institutionally concerned with issues of budget and efficiency. The institutional role of the economists in the Treasury is to efficiently manage the state's budget and policy ventures more generally; this is what they are held accountable for. Therefore, in the welfare-to-work program, they had an institutional interest in strengthening the contractors' commitment to reduce the

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expenditure on income support payments, advance efficient use of resources and prevent manipulation. Thus, the push of lawyers and economists to subordinate the contractors to their own normative systems can be explained by their institutional interest in aligning the contractors' accountability regime with their own to avoid blame.

These differences in institutional interests might also explain why the economists were much more willing to delegate discretionary decision making to the contractors. Both lawyers and economists assumed contractors would generally prefer economic values and interests over legal ones. This shared assumption, not surprisingly, led them to entirely different conclusions and policy responses. On the one hand, the economists, by and large, supported the delegation of discretion to the contractors (interview 15). However, it is interesting to note that when the economists feared the economic interests of the contractors might lead them to abuse the state by exempting "hard to place" participants, they opted for legalistic, rule-based controls over the contractors. The lawyers, for their part, continuously strove to limit the case managers' discretion through rule-based and adversarial mechanisms to counter-balance the market-oriented and instrumental culture of the private firms. This is best demonstrated in their support of publicly funded representation for every participant seeking to appeal case managers' decisions, something not available to welfare recipients in the PES.

Moreover, while the lawyers insisted on strictly applying administrative law on the *direct* relations between the case managers and the participants, they were much more flexible on other aspects of the contractors' actions. For instance, they did not apply to the contractors the body of administrative law that regulates the hiring and procurement practices of public agencies, explaining, rather, that this was exactly the "managerial flexibility" that contracting out should allow (interviews 1 and 8). Thus, as Rosenbloom and Piotrowski (2005) predicted, the lawyers did not simply extend administrative law to the contractors. By differentiating between the "core" of administrative law (safeguarding citizens' rights) and the margins of administrative action (hiring and procurement), they adapted the imperative of administrative law to the context of new public management and entrepreneurial government. Furthermore, the lawyers were aware of the shortcomings of the "control and command" method and emphasized their efforts to make "softer" and more flexible rules that would allow contractors more autonomy in implementing their different work integration philosophies and practices (interviews 2 and 4). However, when such practices were perceived as

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explicitly infringing legality or fairness, the agency lawyers usually opted for mandatory and rule-intensive modes of control.

Nevertheless, although the case demonstrates that the choice of the programs' decision making systems clearly derived from the institutional logics of the economists or the lawyers, respectively, once they become institutionalized in the program, they took on a life of their own. This seems to at least partly explain the overreaching in the economic model in the initiation of the program and the overreaching in the legalist model during the later stages of its implementation. Thus, although these logics and models were crystallized within specific professions and state units, they diffused to the other actors and became a central logic of the program itself throughout the institutions and the practices implementing it.

A Battle of Norms: The Power Dynamics of Publicization

While the competing logics of welfare administration reform represent a central piece in the puzzle of publicization in the Israeli welfare-to-work program, a complementary explanation points to the changing power and legitimacy dynamics between economists and lawyers during the program's design and implementation (for the role of power struggles in the design of administrative justice see Adler 2003). As previously discussed, prior to implementation, economic logic took the lead. The centrality of market-like principles and mechanisms in the program design was driven by the institutional dominance of the Treasury in the policy process. Treasury dominance stemmed from the central role it played in devising Israeli economic policy since the economic liberalization in the mid-1980s (see Ben-Bassat and Dahan 2006; Maman and Rosenhek 2011; Mandelkern 2015), and the fact that MoF economists served as the central agents in importing the "welfare-to-work" model and translating it into local social policy (Maron and Helman 2015).

Once the economists succeeded in making the case for contracting out, their power in the policy process increased even further. The shift to a market-like mode of service provision increased the relevance of their economic expertise in designing incentives and payment models. This was perceived as the *turf* of economists by all actors engaged in the policy process, including the government lawyers. As reported, the lawyers saw the design of the contractors' incentives as "out of their territory" and, consequently, refrained from using their power to veto the payment model. At that stage, the lawyers' only foot in the door was integrating the administrative tribunals and judicial review systems for the case managers' decisions.

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The Treasury and its economic logic were significantly challenged after the program was launched; during implementation, legal professionals and the legal logic became much more dominant. An examination of the case suggests this shift in the power was a result of complex interactions between the internal resistance of government lawyers and an external legitimacy crisis. Internally, during implementation, the legal professionals took the lead in regulating the contractors. This was most notable in the dynamics inside the regulatory agency. Although the agency consisted of both legal advisors and economists, the legal professionals in the agency took the lead until eventually, in 2009, the head legal advisor of the program became the director of the regulatory agency. Once the focus shifted from the macro-level of policy design to the micro-level of the daily operation of the job centers, the lawyers had richer and better developed language to understand and to solve problems of policy implementation.

In addressing the political controversy, the lawyers simply used the tools they had available. As problems and complaints emerged, the lawyers processed them through the prism of administrative law, looking for solutions in their legal toolbox. For them, these were mostly "old problems," requiring "old solutions," and even when "new problems" emerged, traditional administrative law concepts were applied by analogy or other forms of adaptation. Although the law still formally granted wide discretion to the case managers in a piecemeal fashion, through routines of complaints handling and problem solving, the agency's lawyers constantly modified the program regulations to make the contractors comply with administrative law.

At the same time, the strength of the government lawyers in the policy process increased with the support of *external actors* in the regulatory space, the most notable being Labor court judges and the lawyers for welfare rights advocacy groups. The courts decisively applied administrative law norms to the case managers and formalized the administrative tribunals' sessions to court-like settings. For their part, the advocacy groups' lawyers played a major role in putting the judicial review system into motion and triggering the juridification dynamics by encouraging appeals, representing participants, and initiating the campaign for state-funded representation for the participants, even at the tribunal stage. It seems that in line with previous research on the legal profession (Dezalay and Garth 2002, 2011), the lawyers' legal conciseness transcended political and organizational boundaries and created a field of shared values and assumptions. Moreover, the existence of legal experts on both sides—inside and

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outside the government—made the language of the law prominent in the discourse about the program, increasing the power of legal experts throughout its implementation. Thus, the relatively modest model of judicial review initially inserted into the program by the MoJ lawyers as a condition for supporting contracting out, incrementally developed to become a major source of the program's juridification.[4]

However, the demand for legal controls over the contractors went beyond the boundaries of the legal professionals inside and outside government. The media coverage of the allegations of participants of unfair treatment and their assumed connection to the problematic incentive structure of the contractors triggered widespread disapproval of the program. The public discourse shifted from the need to reintegrate welfare recipients into the labor market and the inefficiency of the PES, to the potential unfairness of the privatized model of welfare administration and the need to protect the participants' *rights*. This created increasing political pressure to reform the program, *inter alia*, by making the contractors more accountable for the fairness of their decisions. At one point, the Minister of Industry, Trade and Employment threatened to close the program if it was not reformed significantly (Maron and Helman 2015). Buckling under the political pressure, the economists in the regulatory agency and the Treasury agreed to add legal controls over the contractors. For the economists, publicization seems to have been the lowest possible price to pay to keep the program alive.

What generated this popular demand for legally fashioned decision making processes in privatized welfare? Possibly, the traditions of bureaucratic and legal administration of welfare may still form the public's *expectations* of the appropriate way of doing the government's business even when delegated to private actors. In that respect, decades of the administrative welfare state may not only have transformed our expectations for social justice (Friedman 1986), but also formed our expectations of what constitutes administrative justice. As a result, people expect any decisions that might influence individual's rights should be made according to the legal requirements of due process (Adler 2010; Lens 2013). An alternative explanation is that the power of law might be linked to the *substantive* persuasiveness of law as good governance. In *Law, Society, and Industrial Justice*, Philip Selznick (1969) argues the authoritative nature of bureaucracies, even

[4] The decision of the Israeli Supreme Court on the unconstitutionality of the privatization of prisons (see Feelleey 2014), although not directly applicable to the case studied, might have had an indirect influence on the trend toward legalism in emphasizing the need for legal legitimacy of privatized decision making.

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when "private," pushes private organizations to mirror the legal order of pubic governance, making legality and due process standards the "natural law" of the exercise of authority (see also Selznick 1996). Hence, since the governance of welfare inherently involves the exercise of power, it is only natural that fairness rather than efficiency will govern the delivery of welfare when it is privatized.

In any case, it seems that eventually it was the "legal risks" and not the "economic risks" that captured the attention of the wider audience. It seems the fact that the economists insisted on the strong incentive-based model of governance, especially on attaching the payments to the decrease in income support payments, has become the program's Achilles heel. Although it made sense as the most efficient success measure in economic terms, it was catastrophic in political terms. Thus, paradoxically, the payment scheme which should have been the most explicit expression of the paradigm shift in public governance was probably its biggest hindrance. The strong and explicit linkage between reducing benefits and the contactors' profit made it easy for the programs' opponents to make their case about its unfairness.

In addition, the case demonstrates that the choice of the decision making systems in the program clearly derived from the institutional logics—that is, the collective consequence of the professional training, tools, and norms—of the respective actors, economists and lawyers. However, the case also suggests that once the economic or the legal logic becomes institutionalized in the program it took a live of its own, diffusing to the other actors and becoming the prominent logic of the program itself.

Conclusion

This study demonstrates the central role of government lawyers and economists and their competing institutional logics in the reorganization of accountability and decision making under "entrepreneurial government." The pendulum movements in the Israeli welfare-to-work administrative reform, first in the direction of marketization and then back to legal values and mechanisms, were set off by professionals within the state bureaucracy with the support of other actors in the regulatory space. Although both professional groups supported the idea of privatizing welfare, they had markedly different conceptions of what constitutes trust and what the values and practices of managing street-level discretion should be. While the government lawyers tried to reproduce the logic of (public) law in the privatized setting by applying the mechanisms of bureaucratic and adversarial

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legalism to the private contractors, government economists pushed for importing the logic of the market into welfare governance and replacing "governance via rules" with "governance via incentives." Thus, each professional group strove to appropriate the privatized state by organizing accountability and decision making to accord with their own institutional logic and interests. In other words, economists and lawyers turned to their respective toolboxes, using those tools they knew best.

Notwithstanding the dramatic empowerment of government economists during recent decades, the eventual trend back to law is a result of the growing power of government lawyers during implementation. Relying on their strengths in the "old" public administration—their central institutional position and their already well developed concepts and language of administrative law—the lawyers were able to resist the economists' attempt to move away from law as the paradigmatic logic of public management. Moreover, the resistance to the economists' attempt to "marketize" welfare provision transcended the inner circle of government lawyers and was supported by judges, advocacy groups, and the public at large.

The current study reinforces Kagan's (2010) analysis of the role of mistrust in the shaping of decision making structures. It demonstrates that alongside the importance of political mistrust of left- and right-wing politicians (Brodkin 2007; Kagan 2010), as well as users groups and activists (Melnick 1993), mistrust of various actors *within* the bureaucratic field plays a major role in the organization of decision making. Moreover, privatization and the introduction of incentive-based structures of steering decision making incite new forms of political mistrust, such as anxieties about economic conflicts of interest.

It is not clear whether the popular demand for law-based administration of privatized welfare is an expression of Selznick's idea that legality is the "natural law" of any form of authoritative decision making, or merely historically contingent expectations formed by the legalistic traditions of welfare administration under the administrative state. But the re-infusion of law into privatized welfare seems to reinforce Selznick's (1969) idea that we should be thinking about the norms governing decision making in functional terms that go beyond the traditional distinctions between "public" and "private." Some might ask whether privatization in a less salient area would exhibit a similar pattern of shifting logics. Arguably, we think the case suggests there will be a greater tendency to turn to law as the prevailing logic the more authoritative and compulsory the service is, when it clearly relates to areas of life considered part of well-established political, civic or social

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rights in a given society, and when legal values were dominant in its public provision, before it was privatized.

Nevertheless, the study does not tell a simple story about a shift away and back to law-based administration of welfare. The process of re-organizing accountability and decision making under the privatized structure produced complex outcomes. Struggles led to compromises and concessions between the competing logics of welfare governance in a way that reinvented administrative law and redrew its boundaries. Administrative law was reproduced, and in some aspects, even enhanced in governing the direct relations between private case managers and program participants but abandoned in governing other aspects traditionally regulated through administrative law, such as hiring and procurement practices.

Moreover, it is important to remember that publicization does not guarantee substantive commitment of contractors to legal values. As Selznick (1996: 272) emphasizes, "Legalization can also mean something rather different: the spread of 'legalism,' that is, mechanical following of rules and procedures without regard for purposes and effects." Moreover, the research on legal endogeneity suggests that in the attempt to apply public law to private organizations, legal mechanisms stand at the risk of surrendering to organizations' business logic and becoming merely symbolic (Edelman 2004). Future research should explore the effectiveness of infusing public law into private contracts to produce legal consciousness over time and the manner in which it may have differentiated effects on distinct aspects of privatized conduct.

Appendix: List of Interviews

1. Lawyer, Program's Regulatory Agency; Head of the Agency [2009-2010] (March 2010).
2. Lawyer, Program's Regulatory Agency; Head of the Agency [2009-2010] (May 2013, Second Interview).
3. Lawyer, Program's Regulatory Agency (August 2010).
4. Lawyer, Program's Regulatory Agency (May 2013, Second Interview).
5. Lawyer, the Ministry of Justice (May 2012).
6. Lawyer, the Ministry of Justice (May 2007).
7. Lawyer, the Ministry of Justice (January 2012).
8. Lawyer, the Ministry of Labor (January 2012).
9. Lawyer, the Treasury (June 2012).
10. Lawyer, Advocacy Group (June 2007).
11. Lawyer, Advocacy Group (May 2007).
12. Lawyer, Advocacy Group (January 2012, Second Interview).

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13. Economist, Program's Regulatory Agency (April 2010).
14. Economist, the Treasury (December 2010).
15. Economist, the Treasury (October 2010).
16. Economist, the Treasury (May 2011).
17. Economist, the Treasury (March 2011).
18. Economist, the Treasury (June 2009).
19. Senior Administrator, Chair of the Administrative Tribunals (May 2007).
20. Senior Administrator, Head of the Regulatory Agency [2005–2008] (June 2009).
21. Senior Administrator, Head of the Program's Regulatory Agency [2008-2009] (August 2010).
22. Senior Administrator, Head of the Program's Regulatory Agency [2008-2009] (January 2012, Second Interview).
23. Administrator, Coordinator of a Public Committee (January 2012).
24. Administrator, Coordinator of a Public Committee (February 2012).
25. Employment Expert, Head of a Public Committee (June 2009).
26. Employment Expert, Head of a Public Committee (February 2012, Second Interview).
27. Social Policy Expert, Member of a Public Committee (January 2012).

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