



Delegation of Governmental Power to Private Parties: A Comparative Perspective

Catherine Donnelly

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Through a comparative analysis of England, the European Union, and the United States, this book considers legal responses to delegation of governmental power to private parties. It is argued that although private delegation has the potential to enhance the efficiency and effectiveness of governance, it should not be assumed to have this result. Moreover, private delegation creates risks to democracy, accountability, and human rights. Any legal controls must therefore respond to the challenge of enhancing the potential effectiveness of private delegation, while minimising the risks associated with this phenomenon.

The legal responses of the three jurisdictions to private delegation are categorised in a two-fold and functional way: responses which impose controls on the delegator of governmental power, and responses which impose controls on the private delegate of governmental power. To secure an appropriate comparative methodology within each category the controls imposed by different legal disciplines such as constitutional law, administrative law, regulatory law, and private law are assessed.

Many goals are pursued in this volume . First, the relationship between the different legal responses will be illustrated. It will be argued that the challenge of private delegation is a complex one, which requires a multi-faceted response from a number of different legal disciplines. No one source of legal control is in itself adequate to respond to the challenge. Second, within the discussion of each individual legal control, analysis of appropriate responses to private delegation will be made. Third, it will be shown that at present, the response of all three jurisdictions to private delegation, albeit in differing degrees, is inadequate. A much greater awareness of the risks of private delegation and a greater sense of responsibility on the part of the judiciary are required if the three legal systems are to respond appropriately to the challenge of delegation of governmental power to private parties.

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