

## CALL FOR PAPERS

### Contract as “Public Law” at the Intersection of Globalization and Privatization

March 1 - 2, 2013

Emory University School of Law, Atlanta, Georgia

The process of privatization relies heavily upon contracting in a variety of forms, from outsourcing or the complete transfer of functioning to a private entity to the creation of public-private partnerships. The bargains that are struck are generally justified in terms of efficiency and effectiveness, and work to funnel social assets and obligations into private hands in exchange for a promise that certain goods and services will eventually be returned to the public. These mechanisms complement the more general flow of wealth into private hands as our systems and structures of governance increasingly cede to private ordering. Indeed, states are increasingly acting in service to the private sphere, justifying interventions to protect corporations from the vagaries of the market even as they profess a concern for the public good. At the same time, the negative effects of corporate excesses and mismanagement on the well-being of individuals are deemed to fall within the category of individual or “personal responsibility.”

The expansion of contractual relationships has been the direct result of these processes of privatization. Yet in a ‘post-privatization’ world more individuals are exposed, in more areas of their lives, to contractual ordering and therefore to contract law. What awaits our societies under this alternative legal regime? Is such a regime prepared to handle the masses of people who are not necessarily seasoned market players? And crucially, if and how are such questions taken into account by those considering and crafting concrete privatizations?

While the privatization of public functions may seem unstoppable at this point, we believe it is important to pause and rethink certain private law principles and traditional contract doctrines. Is it possible to incorporate and reflect a vital public interest in the substance and processes of performance of these potentially society-transforming arrangements?

#### Workshop Contacts:

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#### Submissions Procedure:

Email a proposal as a Word or PDF document by 11/30/2012 to Emily Hlavaty at:

[emily.hlavaty@emory.edu](mailto:emily.hlavaty@emory.edu)

\*\*Decisions will be made by December 14th 2012 and working paper drafts will be due February 8th 2013 so they can be distributed prior to the Workshop

\*\*Various resources on vulnerability and resilience can be found on the VCH Initiative website at:

<http://web.gs.emory.edu/vulnerability/resources/index.html>

#### Workshop Details:

The Workshop begins Friday at 4PM in room 575 of Emory Law School (1301 Clifton Rd, Atlanta, GA), followed by dinner in the Hunter Atrium. Panels continue on Saturday from 9:30 AM to 5PM. Breakfast and lunch will be provided.

#### Topics May Include:

- What relationships have been moved from status to contract and what is the justification for doing so? Is this progress?
- What are the limitations and strengths of existing contract law, and what existing doctrines might prove fruitful for the imposition of public values into private contract?
- What is the role for judges in navigating the space between the public and private spheres in the context of post-privatization?
- Might the public be formally included as a third-party beneficiary to a privatization transaction and what would that accomplish, if anything?
- Can we develop a body of “public contract” law that would cover privatization situations? What would such a body of law look like and how might it differ from existing private contract law?
- Are there tools set out in other bodies of doctrine that might be expanded to supplement certain contracting situations?
- What should the duty of good faith mean when it applies to market actors (such as corporations) that replace public institutions?
- What are the duties of providers of privatized services? Do and should they have duties to provide services on an equal basis?
- Can competition and cost/benefit concerns justify a closure of a branch of a privatized service in a distressed neighborhood or should the private provider maintain access to services at all cost?
- Can the discourse regarding contract law as a public law be informed by theories such as feminism, CRT and queer theory, which emphasize the importance of context in legal analysis?
- Are there nuances in interpreting or implementing arrangements such as the “labor contract” or the “marriage contract” that are deemed contractual, but have obvious and clear public and social content, that might be imported into general contract principles?
- Can the policies and principles underlying suggested reforms of consumer contracts to afford more protection for “weaker” parties in some European countries be transplanted to the USA?
- To what extent can the above questions be answered by existing contractual doctrines and what are the obstacles to their use?