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## **Book Review**

Verkuil, P. R. (2007). *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and what we can do about it*. Cambridge University Press.

### **Reviewed by**

Sajjad Ahmad

Outsourcing Sovereignty by Paul Verkuil provides considerate and in-depth analysis of phenomenon behind outsourcing of important government functions. The author elucidates how excessive outsourcing without considerate deliberation and vigilant precautions can jeopardize governments' sovereignty. The book brings into light a crucial debate spread over decades on public and private domains and roles, explicating numerous arguments and counter arguments centering around advantages and restrictions of outsourcing. While Verkuil concentrates on trends in USA, the discussions show relevance for similar kind of conflict in developing countries on state and private sector roles in performance of public functions. Although first published in 2007, the themes of book are still relevant to contemporary debates on state role and emerging tendencies for privatization. The author's perspective is to 'explore public sector privatization, its roots, internal logic, and self-perpetuating nature and propose ways to control this phenomenon in future'.

Dr Paul R. Verkuil, coauthor of a leading treatise, *Administrative Law and Process*, has been President Emeritus of the College of William and Mary and has significantly contributed to administrative law. The author provides an historical development of outsourcing; the trend gaining popularity initially from Iran Contra, leading to an increased tendency of outsourcing of government functions in cases of private prisons, Iraq and Katrina. He highlights the extraordinary tendency of privatization of US government for performance of significant tasks in public sector, civilian as well as military, and spotlights that outsourcing can be beneficial, but too much outsourcing is very hazardous. The trend is apparent in case of Iraq where over 100,000 private contractors were engaged. Such a high level of privatization can have serious impact on state's sovereignty.

Chapter 1 of the book is introductory and explicates major concern as to why outsourcing threatens democracy, whereas, Chapter 2 expounds how contracting out important functions of state to private organizations like private military, Black Water and Friends tantamounts to delegating state sovereignty to private sector. It also explains the multiplicity of circumstances in which contractors have been performing. The author provides a detailed description of growth of private sector and how private prisons, private police and private military evolved. Chapters 3 & 4 provide an insight into diverse public and private approaches and resolutions to transportation security through a case study of privatization of US airport security system and explicate dexterously public and private distinctions as crucial concepts.

Chapters 5 & 6 elaborate the case for constitutional governance which parallels democratic governance and spell out statutory and administrative limitations on private delegations. Reassigning political duties given under constitution to some other agency has impact on concept of separation of powers as Constitution has restraints on private delegations. What is tremendously challenging, however, is the implementation of constraints on delegations. Certain government functions cannot be transferred to private sector, as the legislative powers of congress, President's executive powers and Defense Secretary's power to conduct war are non-delegable.

Chapter 7 highlights contract problems integral to outsourcing by comparing constitutional theory with contract theory in connection with agency cost theory, whereas, Chapter 8 deals with structural reforms to government to cope with challenges of outsourcing. The chapter evaluates

and constructs on reforms of bureaucracy. Public control on outsourcing processes is essential and necessary constitutional, statutory and regulatory reforms to government are crucial.

Chapter 9 is very important as it presents conclusions and inferences drawn from major discussions of the book. The thoughts are comprehensive and inclusive. The replacement of responsible public functionaries with private contractors to perform important functions can be very dangerous to State sovereignty and needs to be curtailed. But high complex nature of public functions will not let it curtail overnight. This will require people ‘who can help secure and preserve public values in an era of unprecedented delegation of power to private sector’, Verkuil rightly concludes.

Verkuil mainly concentrates on instances of outsourcing of military and other national security functions and certain civilian functions in USA. Evidence on mounting tendency for too much privatization by US government is convincing when Verkuil points out: “During the period FY 2000 to FY 2005, the value of federal contracts increased by 86% (from \$203 billion to \$377 billion) and the value of noncompetitive contracts increased by 115% (from \$67 billion to \$145 billion).” This excessive reliance on outsourcing shows propensity of getting rid of responsibilities on the part of government. Amusingly, reliance on outsourcing further drives to supplementary contracting as Verkuil recognizes circumstances in which state had to borrow services of a contractor to monitor work of another contractor. However, sometimes he seems to overstress demerits of contracting out, as he attributes tortures at Abu Ghuraib prisons to private contractors ignoring the very fact that these were functioning under the supervision and direction of government functionaries.

The excessive inclination to outsourcing, according to the Author, is highly problematic and gave rise to serious administrative issues, such as pitiable performance of significant outsourced public functions, clash of interest, outsourcing of such functions as must be reserved with public sector, too high number of private contractors and contracts, particularly excessive no-bid contracts. Furthermore, lack of number and capacity of public functionaries to draft and negotiate the contracts is another severe problem, as with increasing value of contracts in five-year period, number of contracting officers of DOD dropped by 38% during the same period. The lack of effective overseeing of performance of high number of contractors posed another challenge, as many as 52% of DOD contracts had to face negative effects of insufficient

monitoring. 'we have too many contractors performing too many functions with too little supervision', he points out. The loss of core public values is also a major problem.

The unnecessary and excessive outsourcing also impacts capability and morale of government officials, instituting constitutional and legal arguments against high level of contracting. The Author is all out for proper role and benefits of need based outsourcing or privatization, but is equally vehement for discouraging its inappropriate and excessive use. The US Executive should perform important public functions itself efficiently and effectively and contracting to private sector should only be made with authorization of Congress.

The significant part of the book is where Verkuil discusses and recommends safeguards that are essential to obtain acceptable results in contracting out governmental functions. Verkuil's stress on safeguards and cautious approach towards contracting is consistent with NPM styled reforms, as in NPM much stress has been given on prerequisites, precautions and effective contracting. The results of outsourcing across the globe signify how much a vigilant methodology to contracting is crucial for establishing effective systems and achieving intended results. In general, it may be concluded that contracting as a tool, when executed with cautiousness and thoughtfulness, could meaningfully contribute to contractor performance and improvement of outsourced functions.

The precautions suggested by Verkuil embrace a variety of safeguards, such as, to identify carefully functions that are compatible to outsourcing and that which are not, open and transparent contracting procedures, lessening no-bid contracts. The vigilant drafting and negotiation of contracts is as imperative as watchful monitoring of performance of contractors. Contracting out integrally sovereign functions, like interrogation of prisoners, should be avoided.

When studying remedies, we are compelled to agree with Verkuil as he convincingly argues that no sole remedy can bring panacea to the problems caused by outsourcing and only a combination of diverse curative measures can help overcome these problems. But the problem lies with remedies suggested by him. He propounds a list of legal remedies and structural bureaucratic reforms. But, strangely, the remedies proposed by Verkuil have triggered an intense debate and attracted severe criticism on applicability, efficacy or usefulness of these legal remedies. Furthermore, these require such amendments in laws and traditions that are almost impossible, and therefore application of suggested remedies poses a big question. However, four major

structural remedies proposed by him hold good to the solution of problem – reduced use of political appointees, government reorganization, increases in the number of highly talented government employees, and increases in military personnel.

The conclusions given in final chapter present a gist of major themes of the book. Verkuil rightly advocates that public functionaries should earnestly take obligation to regulate and monitor contractors efficiently and effectively while they execute contracts. Simultaneously, he also makes point to bring efficiency and capability in public sector to perform important functions by themselves. For this, they must have required skill sets. After all, public service is vital for appropriate performance of essential government functions. Verkuil agrees that outsourcing may have generally advantageous effects. But it poses a threat to state sovereignty and therefore, a cautious approach needs to be adopted for contracting out important government functions to private contractors. ‘The era of privatization has unintended costs as well as intended benefits’, he concludes.

The analysis by Verkuil is comprehensive, inclusive, un-prejudicial and takes into consideration pros and cons of the issue. He has clarity of thought, his style is brilliant and his arguments are convincing. The only frailer part of book is the matter of impracticability of many of proposed remedies by Verkuil, as these are difficult to implement being non responsive to legal and factual constraints. Keeping in view the rising trends of privatization of public services, even the core public functions, the Book has a lot to offer and is widely applicable to developing countries including Pakistan.