Is the Private Sector Really a Model of Efficiency and Independence? Re-evaluating the Use of Public Authorities During Recessionary Times

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Introduction

Over the past ninety years, cities and states have increasingly shifted control and oversight over government services from elected officials to quasi-*private* entities, called "public authorities."[1] Today, public authorities perform thousands of services previously provided by state and local governments, such as mass transit, economic development and housing. In executing these services, public authorities borrow more money than all of the cities and states combined,[2] and in some states, such as New York, they issue over 90% of the public debt.[3]

While public authorities are authorized to perform public services, they are specifically organized around a private sector model that includes a board of directors and a hierarchy of officers. The most common justification for structuring public authorities around the private sector model is that the model inherently achieves an increase in efficiency and independence in the provision of government services.[4] Mimicking the private sector model, it was thought, would make the provision of public services more "independent," "outside and above politics," "the very epitome of prudence, efficiency, economy" and "free…from political interference, bureaucracy and red tape."[5]

Today, in the midst of a recession and the unfolding of a massive *public sector* bailout of the *private sector*, can organizing public services around the private sector model be justified on the grounds that it inherently increases efficiency and independence? This article sets out to examine this question and begins in Part I by briefly summarizing the origins of public authorities. It reviews the corruption and financial strain experienced by cities and states during the early 1900s that compelled local governments to look at contemporary operational and managerial advancements in the private sector. In response, cities and states structured public authorities around a private sector model that had assumed a mythical status of efficiency and independence.

Part II reviews the same private sector model in light of the current recession and bailout. It raises the question of whether the private sector model, particularly as used in public authorities, still paints a picture of independence and efficiency. It considers the private sector model in light of its contribution to or participation in allowing the current financial crisis to transpire and the necessity of public funds to support private sector entities through the recession.

Finally, Part III discusses recent ideological and conceptual changes in the private sector that have challenged the organization of the private sector model, as used in public authorities. It presents a new and emerging model that is responding to the recession. This model is no longer narrowly and solely focused on efficiency, as defined by the financial bottom line, to the exclusion of other concerns. Rather, it finds profitability and marketability in accommodating environmentally friendly and socially responsible initiatives.[6] Part III questions whether this new model or the ideological approach behind the model is the new icon of efficiency and independence. Further, it explores whether this model, or the principles behind this model, should replace the private sector structure as used for organizing public authorities and should be the basis for providing public services. Just as financial difficulties, corruption and changes in the private sector during the turn of the twentieth century provoked the creation of public authorities, should the recession, mismanagement and changes in the private sector today provoke a re-evaluation of the use of private sector models in providing public sector services?

I. The Private Sector Model and the Creation of Public Authorities

This Part briefly summarizes the economic difficulties and corruption in the public sector around 1900, as well as contemporary changes of governance in the private sector. It considers the mythical status the private sector model assumed, as the apex of efficiency and independence. Because local governments believed the private sector model would help address deficits and corruption by increasing efficiency and independence, they organized public authorities around this private sector model.

A. Local Governments Face Fiscal and Ethical Challenges During the Turn of the Century

In the early part of the nineteenth century, cities and states, particularly in the North and Midwest, sought to grow and implement large capital projects.[7] With the advent of the steam locomotive and the coming of the Industrial Revolution, local governments borrowed money for a variety of projects, including the construction of railroads and canals.[8] Most cities and states were given great leeway in borrowing, as regulations to check spending and borrowing were rare. As a result, cities and states borrowed more money than ever, accumulating record debts.[9] Shortly after the Civil War, the southern states also found themselves with record debts following a drop in property values, residual costs from the Civil War and damaged infrastructure, including prisons, bridges and railroads.[10]

In addition to record debts, cities and states were struggling with government mismanagement and corruption.[11] For example, government officials often borrowed money to finance construction of railroads and canals. The railroad construction contracts were often granted to political allies or were issued hastily, as competition for the railroads was fierce.[12] When railroad barons abandoned projects, cities and states were left with massive debt and no railroad. There was a general outcry to amend state constitutions to require voter approval before cities and states could borrow money.[13] "By 1870 the popular referendum [to approve local borrowing] had become a major part of fiscal policy-making" in America,[14] stabilizing many state and municipal deficits.[15] For example, New York State's debt in 1893 was almost gone.[16]

With the arrival of the Progressive Era in the late nineteenth and early twentieth centuries came a call for increased public services and economic development. Cities and states were compelled to improve and expand the distribution and number of services, straining the economic stability of local governments.[17] Putting further stress on local budgets was a wave of municipal annexations, enlarging major metropolitan areas and increasing their population four to sixty-five times.[18]

Along with an increase in services and serviced areas came an increase in costs.[19] With the constitutional referendum requirement in place, cities and states found it difficult to raise capital by borrowing, as the public referendum requirement was often slow, expensive and unsuccessful. With few alternatives, politicians looked to the private sector for new and innovative managerial and operational techniques.

B. A New Private Sector Model Develops During the Turn of the Century

Prior to the end of the nineteenth century, the typical private sector model was characterized by an entrepreneur that served as the owner *and* the manager.[20] It was "the era of entrepreneurial or family capitalism" in which the owner managed the business and was intricately involved with the day-to-day operations.[21]

By the early twentieth century, the private sector model characterized by joint ownership and management had changed. As described in *The Visible Hand: The Managerial Revolution in American Business* by Alfred D. Chandler, Jr., a new private sector model emerged that was characterized by a separation of ownership and management.[22] Leading the charge, railroad companies devised new management methodologies to respond to their geographically vast and operationally complex functions. They implemented the first widespread use of a complex management system that operated independently from ownership. The system consisted of a board of directors, top-level managers (for example, chief executive officer and chief financial officer) and a large number of salaried and middle managers.[23] The railroad companies also developed modern business accounting with sophisticated financial, capital and cost accounting procedures.[24]

By the 1880s, the railroad innovations were standard operating procedures and spread throughout the private sector.[25] As businesses continued to expand, ownership became increasingly dispersed among shareholders.[26] Often those holding an ownership interest had little or no authority over management, while those in charge of management were professional operators with no ownership in the business.[27] The separation between management and ownership was designed, among other things, to form an independent managerial body and to make the private sector model more efficient in the delivery of services or products.[28]

C. Local Governments Adopt the Private Sector Model to Address Public Sector Fiscal and Ethical Challenges

Believing the managerial and operational changes occurring in the private sector could make government more efficient and independent, as they had done in the private sector, state and city governments organized public authorities around the private sector model.[29] Because they were structured around the private sector model, public authorities were thought to be "simply too businesslike and efficient to fall prey to the corruption and managerial disarray that infect[ed] less businesslike, less efficient, more 'political' units of traditional government."[30]

Just as the private sector model separated ownership from management in the private sector, newly formed public authorities were designed to separate the public's "ownership" over government services from management of those services.[31] It was believed that separating public services from the public and the political arena would solve fiscal and ethical issues by making the provision of public services more efficient and independent.[32] This belief relied heavily on two related principles: one, that public authorities were more efficient because their independence allowed them to avoid elected politics and oversight by an elected body; and two, that they were more efficient because they were not subjected to regulations applicable to state and city governments.

Lending support to the claim that they were more efficient and independent was the ability of public authorities to morph into a public or private entity depending on the circumstance.[33] For example, on the one hand, public authorities were able to issue tax-exempt bonds, which only public entities were permitted to issue. On the other hand, they were able to avoid many regulations applicable to state and city governments, such as civil service and procurement laws, because they were considered private entities.

Most importantly, public authorities were considered private (i.e. independent from government) for purposes of debt restrictions and limitations applicable to state and city governments.[34] The private sector structure allowed them to avoid the voter referendum requirement and borrow for capital projects without asking the voters.[35] Thus, faced with rising costs and increased demand for expanded services, state and city governments turned to public authorities to borrow money.

By the 1960s public authorities were "financing, constructing, and managing public housing, bridges, tunnels, roads, mass transit systems, university dormitories, sewer systems, sport stadiums, parks, convention centers, bus stations, landfills, and power plants" all over the country.[36] Public authorities were being used for and becoming "known as 'borrowing machines' whose uses were seemingly unlimited."[37]

Because of the ease with which public authorities could issue debt, they have grown faster than any other public or quasi-public entity. They are second only to the federal government in the amount of debt they have issued and issue per year.[38] The widespread use of public authorities has led critics to refer to them as the "fourth branch of government,"[39] "phantom governments"[40] and "underground government[s]."[41]

II. Efficiency, Independence and the Private Sector Model in Recessionary Times

This Part reviews the economic difficulties experienced in the private sector today and whether those difficulties contradict the notion that the private sector model is inherently more efficient and independent. It notes the public's changing perception of the private sector and an increased skepticism that it is an example of efficiency and independence. This Part concludes by questioning whether using the private sector model to constitute public authorities can still be justified on the grounds that it is more efficient and independent.

The enormous financial repercussions following mismanagement and malfeasance in the private sector are well documented.[42] Whether attributable to subprime loans, poor oversight, deregulation, greed, Ponzi schemes or a host of other ailments,[43] the private sector today paints a very different picture from the model of efficiency and independence idealized during the early twentieth century and used to created public authorities.

As noted above, the private sector model, as constituted in public authorities, was designed to separate "ownership" of public services from management of public services just as it had done in the private sector. For purposes of borrowing, this separation made public authorities independent from state and city governments because a wide body of interested people (i.e., shareholders, elected officials and voters) were not involved in the day-to-day operations. By separating the voters and elected officials from daily operations, public authorities were considered *independent* and their bonds, therefore, were not backed by state or city governments.

A closer look at the private sector model, as constituted in the private sector, reveals a structure quite *dependent*, rather than independent, upon the public sector. In 2008 and 2009, many entities in the private sector and the financial system itself relied upon public funds to continue to operate at great cost to the public.[44] Early 2009 reports indicated that the government was prepared to provide more than $7.76 trillion in public funds to "rescue" a portion of the private sector.[45] Part of that rescue plan included the public sector's acquisition of an ownership interest in numerous private entities and spending billions of public funds to prop up entities, such as AIG and GM.[46] Further, the public sector, in conjunction with dedicating public funds, has taken an active role in management. The President has appointed officers and board members to private corporations,[47] and Congress and the Administration are regularly overseeing and criticizing the day-to-day operations of private corporations.[48]

The government's acquisition of an ownership interest and its active involvement in management in the private sector is a move toward a rejoining of ownership and management. The result of this concentration and other actions to assist the private sector exhibit *dependence* upon public funding and resources and a joining of management and ownership. The government's actions represent a reversion to the pre-twentieth century private sector model where management and ownership were not independent from one another.[49] Combining management and ownership is a move away from the mythical and idealized independence of the early twentieth century private sector model. If the private sector model is unable to exhibit independence in the private sector, on what grounds do public authorities rely to show that they are achieving a justifiable independence in the public sector?

Similarly, the perception that the private sector model is an operational and managerial icon of "efficiency" has suffered during the current recession. Many of the claimed "efficiencies" achieved in the private sector have been revealed as shortcuts and run-arounds that have contributed to the crisis. Richard Bitner, in *Confessions of A Subprime Lender: An Insider's Tale of Greed, Fraud and Ignorance*, paints a bleak picture of mortgage lending, only one part of the private sector.[50] He discusses how "efficiencies" were driven by greed, lack of financial control and willful ignorance. In order to procure quick profits, lenders turned unqualified borrowers into new homeowners with reckless disregard for the results by abolishing many oversight and accountability measures.

Actions by entities in other areas of the private sector further erode the perception that structuring around a private sector model is inherently efficient. Rating agencies, which served as an important level of oversight, relied on other rating agencies' analyses and did not perform their own analyses.[51] This "was one of a series of shortcuts that undermined credit grades issued by S&P and rival Moody's Corp…. Flawed AAA ratings on mortgage-backed securities that turned to junk now lie at the root of the world financial system's biggest crisis since the Great Depression."[52]

While there are disputes and extensive discussions concerning the definition of "efficiency" for purposes of determining the health of the private sector, by any of those definitions, the $523.3 billion in bank writedowns and losses stemming from the above shortcuts and leading to the "collapse or disappearance of Bear Stearns Co. Inc., Lehman Brothers Holdings Inc. and Merrill Lynch & Co," cannot be considered efficient.[53]

Shortcuts, malfeasance and mismanagement were not limited to mortgage lending. Ponzi schemes orchestrated by Stanford Financial Group, Bernie Madoff, and Gordon Brownoff also resulted in billions of losses for people across the globe. Since the recession officially began in December 2007,[54] actions by Wall Street executives continue to hurt the private sector's image as JPMorgan Chase, AIG, and others continue to move forward with lavish plans, even after taking billions in public funds.[55]

The list of companies and individuals involved with the financial crisis appears to grow every day. As that list grows, the public's early twentieth century perception of the private sector as an icon of efficiency and independence diminishes.[56] One recent poll indicated that only 30% of Americans believed Wall Street executives could make the right decisions to end the recession, while 75% believed the President could.[57] Further, investor confidence in the private sector continues to suffer as the recession unfolds.[58] In the past year, billions of dollars have shifted out of private sector entities and funds to public sector bonds.[59] Where the private sector was once held in high esteem, it is now distrusted and often scorned.

With millions of people having lost jobs, homes and retirement savings in the wake of actions in the private sector, it is hard to blindly accept the claim that the private sector model is efficient, independent and one that would serve the public good through public authorities. In light of the loss of confidence in the private sector, the *public sector* bailout of the *private sector*, the recession and corresponding job losses, foreclosures and retirement losses—can structuring public authorities around a private sector model still be justified on the grounds that the model inherently increases efficiency and independence in the provision of government services?

III. Restructuring the Private Sector Model and Its Use as a Basis to Provide Public Services

This Part examines a new and emerging private sector business model that has flourished in the wake of the recession and bailout. The new model adopts a more public service-oriented strategy, focusing equally on profitability, environmental friendliness and social responsibility. This Part questions whether the new model is now the icon of efficiency and independence, and whether it should replace the antiquated private sector model that has been used to create public authorities for the past ninety years. If the private sector model is gravitating toward a new organization and finding efficiency and independence in an environmentally and socially conscious business structure, should the provision of government services follow?[60]

During the early twentieth century, the mythical private sector model epitomized as the height of efficiency and independence was in sharp contrast to a government that was considered listless and rife with corruption. Today, the public's perception of government and the private sector have inverted. Where once the private sector was held in high esteem, the perception of the private sector today fades with every new allegation of mismanagement, graft and corruption. Recent polls indicate not only an increased faith in the public sector and its ability to handle the economic recovery, but also a decreased faith in the private sector to do so.[61]

Even before the recent economic turmoil, although quick in response to it, a new private sector model reconceptualizing "efficiency" and the purpose of a for-profit business began to emerge.[62] The focus of the new and growing private sector model is no longer narrowly and solely focused on "efficiency," as defined by the financial bottom line to the exclusion of other concerns and impacts. The new model finds efficiency, profitability and marketability in accommodating environmentally friendly and socially responsible initiatives.

Innovative entrepreneurs are shifting objectives and adopting the new model, understanding that an expanding and powerful market is seeking socially responsible and environmentally friendly products and processes.[63] These entrepreneurs are not merely making their businesses or products "green," but rather they are fundamentally changing the way they operate their businesses. Every decision is made with the long-term social, environmental and financial impacts in mind. They create long-term stakeholder value by embracing opportunities and managing risks derived from economic, environmental and social developments. They argue that the new model derives economic efficiency by, or at least achieves economic efficiency in conjunction with, promoting social and environmental initiatives.[64] One recent study highlighted the efficiency benefits of the new model, finding that "in 16 of the 18 industries examined, companies recognized as [implementing the new model]…

outperformed their industry peers over both a three- and six-month period, and were well protected from value erosion."[65]

The new private sector model has assumed and continues to assume a variety of identities and forms, including "Triple Bottom Line,"[66] "Corporate Social Responsibility,"[67] "B Corporations,"[68] "Hybrids"[69] and others. For each new identity and form, there are corresponding criteria to guide private sector entities in achieving the new model. Although distinct, the criteria cover common ground that includes: environmental performance and monitoring; employee ownership and compensation; community involvement; production of beneficial product or service and in a legal and beneficial manner; charitable work; and transparency and accountability in governance.[70]

In light of these changes in the private sector, can government services once performed by public authorities also find efficiency and value in focusing on environmental, social and economic concerns?[71] Criteria similar to those set forth above are helping to redefine the private sector model in the midst of, and partially in response to, the economic downturn. It seems it would be prudent for cities and states to consider following a related path and re-evaluate the use of the old private sector model used to organize public authorities. Cities and states could consider what, if any, benefits can be gleaned from the ideological approach used to develop the new private sector model. Cities and states have an opportunity to delve deeper into understanding the current changing of consciousness in the private sector and how this change may be a positive force for the provision of public services.

The current private sector model structuring public authorities was primarily justified on an economic basis, particularly as it related to public authorities' borrowing practices. In addition to economic benefits, the new private sector model and the ideological approach adopted by it find value in environmental and societal benefits. Cities and states are in a position to question whether using the old model is efficient and independent, and whether the new model is now the icon of efficiency and should serve as the basis for providing public services.

The new and emerging private sector model offers cities and states with a new method for providing public services. The ideological concepts behind the new model provide governments with a set of criteria and benchmarks for providing public services in an efficient manner, as defined by the new model. Instead of providing public services through an entity formed by copying structural elements in the private sector such as a board of directors and hierarchy of officers, cities and states could provide public services based on ideals and concepts in the new model that we, as a society, value.

Where the provision of public services and the organization of public authorities were built around a myth of efficiency and independence rooted in an antiquated private sector model, state and city governments can shift focus to concentrate on the environmental, social and financial impacts of the services. For example, instead of designing public authorities to avoid regulations that are often promoting the environment (for example, local zoning laws) or the community (for example, local procurement or living wage laws), a new public model would incorporate environmental and community initiatives into its overall strategy. Similarly, instead of designing public authorities to separate voters and elected officials from the provision of public services, the new private sector model would focus on inclusion, community building and social responsibility in providing those services. Rather than having thousands of public authorities operating clandestinely with thousands of distinct geographical jurisdictions, input from voters and elected officials would be encouraged. At the very least, voter participation would educate people on which public services are provided and by which entity. It would also incorporate a level of oversight and accountability directly into the new public model. That oversight, as required in the private sector model, would focus not only on the financial impact, but also on the social and environmental impacts.

The ideals embraced by the new private sector model are consistent with our ideals for a public entity. In light of the changes in the private sector, cities and states should explore whether the provision of public services that considers the ideological changes in the new private sector model will be beneficial and will achieve the goals of efficiency and independence.

Conclusion

Public authorities were born out of financial crisis and corruption. Governments witnessed advancements in the private sector and sought to capitalize on them. We are experiencing an analogous situation today. In the midst of a recession, a new private sector model is emerging. By combining public sector services with revised private sector motives, cities and states can seek to maximize on both, resulting in positive economic, environmental and social benefits to cities, business and citizens. Local governments stand to benefit from efficiencies, as defined by the new model, and from environmental and health benefits, stressed by the new model.

The changing of consciousness in the private sector questions the continued use of public authorities, as currently constituted, and whether they achieve their stated purpose of efficiency and independence. In light of the current fiscal crisis, do we require more than past precedents to justify the continued use of public authorities? It would truly be a reversal of fortunes if the private sector gravitated toward an environmentally and socially conscious model, while the public sector and government services held steadfast to an antiquated, separated private sector model.

Endnotes

1. Public authorities are generally created to provide one public service or undertake one public project. Some well-known examples include the Port Authority of New York & New Jersey, the Tennessee Valley Authority, and the Housing Authority of the City of Los Angeles.

2. *See* Bernard F. Hillenbrand, Foreword to Robert G. Smith, Public Authorities, Special Districts, and Local Government ix (1964); *see also* Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 925 (2003) (citing William D. Valente et al., Cases and Materials on State and Local Government Law 647 (William D. Valente ed., 5th ed. 2001)).

3. Alan G. Hevesi, Office of the State Comptroller, 2004-05 Budget Analysis, Review of the Executive Budget 55 (Feb. 2004), *available at* http://www.osc.state.ny.us/reports/budget/2004/execbudget04.pdf.

4. *See* Smith, *supra* note 2, at 53-87, 125-50 ("The two most frequently repeated arguments proffered in favor of the creation of public authorities are:…they [are] 'business-like'…and…'out of politics"'); *see also* Kathryn A. Foster, The Political Economy of Special-Purpose Government 18 (1997); Gerald E. Frug, *Beyond Regional Government*, 115 Harv. L. Rev. 1763, 1781--82 (2002) (stating that the use of public authorities is mostly based on "efficiency," "expertise" and independence and not on "equality"); *see generally* David J. Barron, *Reclaiming Home Rule*, 116 Harv. L. Rev. 2255, 2300 (2003) ("[U]rban reformers…deployed the corporate analogy that had once pointed back to an image of the incorruptible segmented private city…to promote an urban future in which expertise and efficiency would shape municipal governance. If the great cities of the day were like private businesses, it was only because they, like modern corporations, should be run by principles of expertise and efficiency….").

5. Diana B. Henriques, The Machinery of Greed: Public Authority Abuse and What to Do About It 2 (1986) (quoting Robert Moses in Robert A. Caro, The Power Broker: Robert Moses and the Fall of New York (1974) and Austin J. Tobin, former director of the Port Authority of New York and New Jersey); *see also* Foster, *supra* note 4, at 18; Smith, *supra* note 2, at 53-87, 125-50; Alan G. Hevesi, Office of the State Comptroller, Public Authority Reform, Reining in New York's Secret Government 3 (2004), *available at* http://osc.state.ny.us/press/releases/feb04/publicauthorityreform.pdf [hereinafter Public Authority Reform] ("The benefits of public authorities include their ability to finance public improvements without increasing taxes…to avoid the use of broad-based dedicated revenue streams, to finance the public takeover of private enterprises, to remove entities and associated operations from the direct control of elected officials, and to provide a more flexible management environment than is typical of government." (citing Office of the State Comptroller, Study No. 4, Public Authorities in New York State: A Financial Study, Comptroller's Studies for the 1967 Constitutional Convention (June 1967) (citing the Report of the Temp. State Comm'n on Coordination of State Activities (1956)))).

6. The combination of generating profits, enhancing the environment and being socially responsible is often referred to as the "triple bottom line." The triple bottom line concept is thought to be originated by John Elkington in *Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development*. John Elkington, *Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development*, Cal. Mgmt. Rev, 36, no. 2: 90-100 (1994); *see also* John Elkington, Cannibals with Forks: The Triple Bottom Line of 21st Century Business ix, 2 (1998) (stating, "The triple bottom line approach to sustainable business views corporate performance and success in three separate dimensions: economic prosperity, environmental quality, and social justice."); Cynthia A. McEwen & John D. Schmidt, Leadership and the Corporate Sustainability Challenge 10 (2007); Canadian Bus. for Soc. Responsibility, Good Company Guidelines for Corporate Social Performance 11 (2002) (defining triple bottom line as "a business philosophy that focuses on economic prosperity, environmental quality, and social justice").

7. *See* Charles R. Adrian & Ernest S. Griffith, American City Government: 1775–1870, 213–15 (1976).

8. *See* Dennis Zimmerman, The Private Use of Tax-Exempt Bonds 20 (1991).

9. *See* Adrian & Griffith, *supra* note 7, at 213-15; *see also* Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 911-12, 915, 917 (2003) (stating that debt rose so quickly that nine states defaulted on their bonds and four repudiated at least part of their debt) (citations omitted); James A. Maxwell, Financing State and Local Governments 179 (1965) (noting the increase in borrowing to fund canals, highways, and railways).

10. *See also* Benjamin U. Ratchford, American State Debts 162–67, 173–74 (1941).

11. *See* Adrian & Griffith, *supra* note 7, at 214 (stating that many cities and states provided upfront capital to private railroad companies to build railroads to their city or state; when the railroad companies let the projects die, the cities, states and taxpayers were left with massive debt obligations and no railroads); N.Y. State Constitutional Convention Comm., Problems Relating to Taxation and Finance (1938) (stating that every state, except eight, had issued debt for railroads or canals by 1836); *see also* Briffault, *supra* note 2, at 911, 917 (attributing massive debt and losses to state supported turnpikes, canals, and railroads during the early nineteenth century in the hopes of increasing economic development); Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 Wis. L. Rev. 1301, 1308 (1991) (finding that the 1837 depression led to a decrease in railroad value, causing major losses in state-supported debt); *see generally* Maxwell, *supra* note 9, at 179 (stating that nine states and one territory defaulted on their debt during this period).

12. *See generally* Ratchford, *supra* note 10, at 79–81.

13. *See* Adrian & Griffith, *supra* note 7, at 198, 215 ("In early nineteenth century, it became commonplace to require a referendum on proposed bond issues and tax levies beyond a certain level."); Briffault, *supra* note 2, at 911–12, 915, 917 (stating "the vast majority of state constitutions impose some limitation on the ability of their state and local governments to incur debt" in response to massive debt) (citations omitted). A typical constitutional referendum requirement can be found in Article VII, section 11 of the New York State Constitution, and states in relevant part: "no debt shall be hereafter contracted by or in behalf of the state, unless such debt shall be authorized by law…. No law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election." N.Y. Const. art.VII, § 11; *see also* Mich. Const. art. IX, § 15; S.C. Const. art. X, § 13; Utah Const. art. XIV, § 3.

14. Adrian & Griffith, *supra* note 7, at 215.

15. *See also* Maxwell, *supra* note 9, at 180.

16. *See* Problems Relating to Taxation and Finance, *supra* note 11, at 67.

17. *See* Ernest S. Griffith, A History of American City Government, The Progressive Years and Their Aftermath 1900–1920, 32, 106 (1974); Jameson W. Doig & Jerry Mitchell, Expertise, Democracy, and the Public Authority Model: Groping Toward Accommodation, in Public Authorities and Public Policy: The Business of Government 25-26 (Jerry Mitchell ed., 1992); Barron, *supra* note 4, at 2286-87, 2302-03 (noting the concern for corruption and favoritism).

18. *See* Frug, *supra* note 4, at 1766--67 (citing a description of nineteenth century city expansion in Victor Jones, Metropolitan

Government 122-35 (1942); R.D. McKenzie, The Metropolitan Community 191--98, 336 tbl. ix (1933); Paul Studenski, Nat'l Mun. League, The Government of Metropolitan Areas in the United States 65-85 (1930); Jon C. Teaford, City and Suburb: The Political Fragmentation of Metropolitan America, 1850-1970, 32--63 (1979); Kenneth T. Jackson, *Metropolitan Government Versus Suburban Autonomy: Politics on the Crabgrass Frontier*, in Cities in American History 442, 444–48 (Kenneth T. Jackson & Stanley Schultz eds., 1972); Chester C. Maxey, *The Political Integration of Metropolitan Communities*, 11 Nat'l Mun. Rev. 229, 229-30 (1922)).

19. *See* Adrian & Griffith, *supra* note 7, at 225; Griffith, *supra* note 17, at 32, 171.

20. Michael Robertson, *Property and Ideology*, 8 Can. J.L. & Juris. 275, 285 (1995); Alfred D. Chandler, Jr., The Visible Hand: The Managerial Revolution in American Business Intro., Ch.1 (Cambridge, MA: Belknap Press, 1977); Robert Dahl, A Preface to Economic Democracy 69-71 (1985); *see generally* Leslie Hannah, The Rise of the Corporate Economy 18 (1983) (finding that Adam Smith in the *Wealth of Nations* believed that owners should always be working and managing, if productivity and efficiency were to be maximized).

21. Robertson, *supra* note 20, at 285 (citing Hannah, *supra* note 20, at Ch.1–2; Chandler, *supra* note 20, at Ch.1; R. Dahl, *supra* note 20, at 69–71; R. H. Tawney, The Sickness of an Acquisitive Society (1920), reprinted in part as *Property and Creative Work* in C.B. Macpherson, ed., Property: Mainstream and Critical Positions 137–38 (1978).

22. Chandler, *supra* note 20; Hannah, *supra* note 20; Harwell Wells, *The Rise of the Close Corporation and the Making of Corporation Law*, 5 Berk. B. L. J. 263, 273–74 (2008) (citing Adolf A. Berle Jr. & Gardiner C. Means, The Modern Corporation and Private Property 84–89, passim (1932); Philip Scranton, Endless Novelty: Specialty Production and American Industrialization, 1865-1925 (1999); Naomi R. Lamoreaux et al., *Beyond Markets and Hierarchies: Toward a New Synthesis of American Business History*, 108 Am. Hist. Rev. 404 (2003)).

23. *See* Chandler, *supra* note 20, at Ch.3; *see also* The Railroads: Pioneers in Modern Management (Alfred D. Chandler ed. 1979) [hereinafter The Railroads] (reprinting five nineteenth century documents detailing the business organizational changes in the railroads).

24. *See* Chandler, *supra* note 20, at Ch.3; *see also* The Railroads, *supra* note 23.

25. *See* Chandler, *supra* note 20, at Ch.3.

26. *See* Harwell Wells, *The Rise of the Close Corporation and the Making of Corporation Law*, 5 Berk. B. L. J. 263, 273--74 (2008).

27. *See id.* at 274.

28. Chandler, *supra* note 20, at 339 (stating, "Modern business enterprise became a viable institution only after the visible hand of management proved to be more efficient than the invisible hand of market forces in coordinating the flow of materials through the economy….").

29. Griffith, *supra* note 17, at 32, 106 ("The emphasis [of the reforms in the early twentieth century] was clearly on a businesslike handling of municipal affairs, reflecting its usual strong business-tinged origins."). Interestingly, the federal government also took a keen interest in the railroads at this time, leading to what is "widely recognized as the first modern administrative agency," the Interstate Commerce Commission. Keith M. Werhan, Principles of Administrative Law 14, 15 (2007).

30. Henriques, *supra* note 5, at 1; *see also* Foster, *supra* note 4, at 18; Smith, *supra* note 2, at 53-87, 125-50; Frug, *supra* note 4, at 1781-82; *see generally* Barron, *supra* note 4, at 2300.

31. Written directly into state enabling statutes, most public authorities are created with a board of directors and hierarchy of managers that establish the basic corporate structure, separating management from ownership. *See, e.g.*, Cal. Pub. Util. Code §§ 130050.2, 130051 (West 2006) (establishing the Los Angeles County Metropolitan Transportation Authority with a fourteen-member board); Mich. Comp. Laws Serv. § 830.412(2) (LexisNexis 2006) (establishing the Michigan State Building Authority with a five-member board appointed by the governor with the advice and consent of the senate); 24 P.S. §§ 791.2 (establishing the Pennsylvania Public School Building Authority with nine members of a "body politic and corporate"); V.T.C.A., Gov. Code §§ 1232, 1232.052 (establishing the TFA with a seven-member board of directors appointed by the governor with the advice and consent of the senate). The board of directors and managers are generally not elected by the public (i.e., "owners") and are difficult to be removed by elected officials. *See, e.g.*, Andrea Estes, *Romney Takes Steps to Remove Amorello*, The Boston Globe, July 16, 2006, http://www.boston.com/news/traffic/bigdig/articles/2006/07/19/romney_takes_steps_to_remove_amorello/ (detailing moves by governor to remove public authority management); Anthony Flint, *Romney Taps Aide for Pike Board Grabauskas Will Succeed Mihos*, The Boston Globe, Aug. 19, 2004, at B1.

32. *See* Griffith, *supra* note 17, at 32, 106; Henriques, *supra* note 5, at 1; *see also* Foster, *supra* note 4, at 18; Smith, *supra* note 2, at 53-87, 125-50; Frug, *supra* note 4, at 1781-82; *see generally* Barron, *supra* note 4, at 2300.

33. *Compare Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 52 (1994) (holding that public authority was a private entity not entitled to state immunity); *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 680 (1992) (finding Port Authority of New York & New Jersey to be a private entity operating an airport); *Ball v. James*, 451 U.S. 355, 371 (1981) (upholding unequal voting power for the board of directors of a special district because it provided electricity, a function typically provided by private companies), *with Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 392 (1995) (holding that Amtrak was a public agency because it was created by Congress and members appointed by the President); *Hadley v. Junior Coll. Dist.*, 397 U.S. 50, 53 (1970) (requiring one person one vote for election to community college district because it "exercised general governmental powers").

34. *See Schulz*, 84 N.Y.2d 244, 247 (holding the purpose of public authorities is to "'protect the State from liability and enable public projects to be carried on free from restrictions otherwise applicable"') (citations omitted); Nancy Burns, The Formation of American Local Governments, Private Values in Public Institutions 16 (1994) ("technical financing maneuver[s]… has become accepted wisdom about why we have [public authorities]") (citation omitted); Henriques, *supra* note 5, at 4 ("the public authority provided the legal smokescreen behind which essential government work could be done and paid for").

35. *See, e.g.*, *Carr-Gottstein Props. v. State*, 899 P.2d 136 (Alaska 1995); *Strand v. Escambia Cty.*, 992 So.2d 150 (Florida 2008); *Campbell v. State Road & Tollway Auth.*, 276 Ga. 714 (2003); *In re Anzai*, 936 P.2d 637 (Haw. 1997); *Train Unlimited Corp. v. Iowa Ry. Fin. Auth.*, 362 N.W. 2d 489 (Iowa 1985); *Wilson v. Ky. Transp. Cabinet*, 884 S.W.2d 641 (Ky. 1994); *Employers Ins. Co. of Nev. v. State Bd. of Exam'rs*, 21 P.3d 628 (Nev. 2001); *Bulman v. McCrane*, 312 A.2d 857 (N.J. 1973); *Schulz v. New York*, 84 N.Y.2d 231 (1994); *Fent v. Okla. Capitol Improvement Auth.*, 984 P.2d 200 (Okla. 1999); *Mun. Bldg. Auth. v. Lewder*, 711 P.2d 273 (Utah 1985); *Dykes v. N. Va. Trans. Dist. Comm'n*, 411 S.E. 2d 1 (Va. 1991); *Dep't of Ecology v. State Fin. Comm.*, 804 P.2d 1241 (Wash. 1991).

36. Mitchell, *supra* note 17, at 37.

37. *Id.*; *see* Briffault, *supra* note 2, at 922 (finding public authority bonds are used "solely to evade the debt limits. These bonds do not involve using the state to provide extra security for public authority bonds; instead, their only purpose is to enable the state to use a public authority to circumvent the state constitution"); Public Authority Reform, *supra* note 5, at 4 ("[I]n the 1960s public authorities were established to finance housing and urban development initiatives without the need for a statewide

referendum. From the 1970s to the present, a number of public authorities have been established with the sole purpose of issuing debt on behalf of the State or local governments.").

38. U.S. Census Bureau, *State and Local Government Finances by Level of Government and by State: 2001-02* (Dec. 9, 2005), http://www.census.gov/govs/estimate/0200ussl_1.html.

39. Office of the State Comptroller, New York State Comptroller's Studies on Issues on Public Finance, Statewide Public Authorities: A Fourth Branch of Government? (1972) [hereinafter A Fourth Branch of Government].

40. *See* John C. Bollens, Special District Governments in the United States 30 (Univ. of Cal. Press 1957).

41. Public Authority Reform, *supra* note 5, at 3; A Fourth Branch of Government, *supra* note 39.

42. *See, e.g.*, Jack Healy, *Housing Construction Fell in March, Dashing Hopes*, N.Y. Times, Apr. 16, 2009, *available at* http://www.nytimes.com/2009/04/17/business /economy/17econ.html?_r=1&hp; Special Report, *When Fortune Frowned*, The Economist, Oct. 9, 2008, *available at* http://www.economist.com/specialreports / displayStory.cfm?story_id=12373696 (stating that in February 2009, the rate of unemployment increased to 8.1 percent, hitting a 25-year high. The median home price dropped 26 percent over the past year and a half, and about 12 percent of homeowners were in foreclosure or behind on mortgage payments at the end of 2008. Similarly, the Dow Jones industrial average and the Standard & Poor's 500 index lost "more than half their value since the stock market peaked in October 2007. It's the worst bear market since the aftermath of the crash of 1929, when the Dow plunged 89 percent and the S&P 500 index tumbled 86 percent"); Alan Zibel, Christopher Leonard & Tim Paradis, Op-Ed., *When Economy Bottoms Out, How Will We Know?*, AP Business Writers, Mar. 7, 2009, *available at* http://www.usatoday.com/money/topstories/2009-03-07-3942277786_x.htm. *See generally* Paul Krugman, *Banks Gone Wild*, N.Y. Times, Nov. 23, 2007, at A37 ("The point is that the subprime crisis and the credit crunch are, in an important sense, the result of our failure to effectively reform corporate governance after the last set of scandals.").

43. *See, e.g.*, Zibel, Leonard & Paradis, *supra* note 42; Then-candidate Barak Obama, *Renewing the American Economy*, N.Y. Times, Mar. 27, 2008, *available at* http://www.nytimes.com/2008/03/27/us / politics/27text-obama.html (noting mismanagement in lending and failures in regulating); Alan M. Christenfeld, *Proliferating Fraud Challenges Lenders to Step Up Diligence*, N.Y.L.J., Apr. 2, 2009, at Col.1 (detailing Ponzi and other fraud schemes and proposals to combat).

44. Readers may point out that prior to the current financial crisis many in the private sector were reliant upon the public sector for funding through a variety of incentives, including tax credits and insurance to boost confidence. Although this point is critical to a larger analysis highlighting the private sector's reliance upon public funds, this section is only examining direct public funding of private entities, as an extension of the current financial crisis.

45. *See* Mark Pittman & Bob Ivry, U.S. Pledges $7.7 Trillion to Ease Frozen Credit, Bloomberg.com, Nov. 25, 2008, http://www.bloomberg.com/apps /news?pid=20601109&sid=an3k2rZMNgDw &refer=home (last visited Sept. 10, 2009); *see also* David Goldman, Bailout Tracker, CNNMoney.com, http://money.cnn. com/news/storysupplement/economy/bailouttracker/index.html (last visited Sept. 10, 2009) [hereinafter Bailout Tracker] (noting $10.5 trillion in public funds has been committed and $2.5 trillion has been invested).

46. *See, e.g.*, Chris Isidore, Feds Step Deeper into Citi Bailout, CNNMoney.com, http://money.cnn.com/2009/02/27/news/companies/citigroup/index.htm?postversion=2009022707 (noting an approximate 36% ownership of Citigroup) (last visited Sept. 10, 2009). *See also*, Bailout Tracker, *supra* note 45 (listing entities receiving funds, programs under which the funds were allocated and number of public funds invested).

47. *See* Neil King, Jr. & John D. Stoll, *Government Forces Out Wagoner at GM*, Wall St. J., Mar. 30, 2009, at A1 (detailing removal of GM's CEO and other actions taken by government).

48. *See, e.g.*, Daniel Wagner, *Fed Pushes Citi, BofA to Increase Capital*, Wall St. J., Apr. 28, 2009, at A1, *available at* http://online.wsj.com/article/SB124088901025362487. html#mod=todays_us_nonsub_page_one; Edmund L. Andrews & Peter Baker, *Bonus Money at Troubled A.I.G. Draws Heavy Criticism*, N.Y. Times, Mar. 15, 2009, *available at* http://www.nytimes.com/2009/03/16/business/16aig.html?emc=rss&partner=rss.

49. This, of course, raises other issues that are beyond the purview of this article, such as conflict-of-interest issues among the public sector as regulator, owner and manager.

50. Richard Bitner, Confessions of a Subprime Lender: An Insider's Tale of Greed, Fraud, and Ignorance (2008).

51. Elliot Blair Smith, Bringing Down Wall Street as Ratings Let Loose Subprime Scourge, Bloomberg.com, http://www.bloomberg.com/apps/news?pid=20601109&sid =ah839IWTLP9s (last visited Sept. 10, 2009).

52. *Id.*

53. *Id.* Sadly, one may argue that the rating agencies did in fact profit greatly from these "efficiencies," thus justifying their actions. ("Moody's operating margins exceeded 50 percent for the past six years, three to four times those of Exxon Mobil Corp" and structured finance was its "leading source of revenue"). *Id.*

54. *See* The Bus. Cycle Dating Comm., National Bureau of Economic Research, Determination of the December 2007 Peak in Economic Activity (2009), *available at* http://www.nber.org/cycles/dec2008.html; Neil Irwin, *It's Official: U.S. in Recession*, Wash. Post, Dec. 1, 2008, *available at* http://www.washingtonpost .com/wp-dyn/content/article/2008/12/01/AR2008120101365.html.

55. *See* Brian Ross, Joseph Rhee & Megan Chuchmach, *JPMorgan Chase to Spend Millions on New Jets and Luxury Airport Hanger*, ABC World News, Mar. 23, 2009, http://abcnews.go.com/Blotter/story?id=7146474&page=1 (last visited Sept. 10, 2009) (stating that JPMorgan Chase intends to go forward with $138 million dollar purchase of two jets, despite having taken $25 billion in TARP funds). Many of the funds were taken as part the Troubled Assets Relief Program under the Emergency Economic Stabilization Act of 2008, signed into law on October 3, 2008, Pub. Law 110-343.

56. Paul Krugman, *Crisis of Confidence*, N.Y. Times, Apr. 14, 2008, at A23 (declaring that the public has, in short, "lost confidence in the integrity of our economic institutions"); Jay Bookman, *In Obama, Hope, Unity Prove True*, Atlanta J. & Const., Jan. 19, 2009, at A14 ("roughly $7 trillion in value has disappeared from Wall Street, destroying not just wealth but confidence"); Paul Steinhauser, Poll: Politicians Trusted More Than Business Leaders on Economy, CNN.com, http://www.cnn.com/2009/ POLITICS/02/23/poll.economy/ (last visited Sept. 10, 2009); *see also* Larry King Live (CNN television broadcast Feb. 23, 2009), WLNR 3522973 (quoting Dee Dee Myers) ("[O]ne of the things that we've seen is, across the board, people have lost confidence in the private sector. They've lost confidence in business' ability to pull us out of this."); Rachel Maddow Show, MSNBC television broadcast Feb. 2, 2009, WLNR 1989516:

> [RACHEL] MADDOW: I think that, as Americans, we are sort of hard-wired to believe that businesses…could probably run themselves better than any government agency…. That said, I sort of feel like my pet bunny could do a better job running the bank right now….
>
> [SENATOR CLAIRE] MCCASKILL:…the people who got us in this mess, by and large, remain in control of these very large financial institutions…. So that is another problem with confidence.…maybe they should say…we've got to move on because people don't have confidence in us anymore.

57. Steinhauser, *supra* note 56.

58. *See* The Associated Press, *Germany: Investor Confidence Falls to 17-Year Low*, N. Y. Times, July 16, 2008, at C7 (stating that "German investor confidence fell to its lowest level since the private research firm that compiles the index began the measurement in 1991."); Teh Hooi Ling, *Will Investor Confidence in Hedge Funds Return?*, Bus. Times (Singapore), Feb. 6, 2009; Andrew Main, *Suddenly, Broking Is Dangerous as Investor Confidence Goes Missing*, The Australian, Jan. 31, 2009, at 29 (stating that investors are "sitting tight and whimpering quietly rather than stepping up and bargain hunting").

59. *See* Walter Brandimarte, *Investors shift to bonds as retail data disappoint*, The Int'l Herald Trib., Apr. 15, 2009, at 17; Fin. Times Limited, *Slovakia moves towards cash and government bonds*, Eur. Pensions & Investment News, Nov. 3, 2008, *available at* 2008 WLNR 21303690.

60. Although entirely relevant to the discussion of whether public authorities should continue as currently constituted, the failure of public authorities to solve many of the early twentieth century woes, including corruption and mismanagement in the public sector, is beyond the purview of this article. For a discussion of the failure of public authorities to operate efficiently as government bodies, see Public Authority Reform, *supra* note 5, at 29 (stating that with the increase of public authorities "allegations of impropriety…corrupt practices also surface. Investigations…[and] audit[s]…uncover [ ] cases of bribery, nepotism, bid-rigging, misuse of funds and financial mismanagement—costing the State tens of millions of dollars and resulting in the indictments of dozens of authority employees."); *see* Henriques, *supra* note 5, at 42-52; Doig & Mitchell, *supra* note 17, at 116-20; Hillenbrand, *supra* note 2, at 33-37; *see also* Bollens, *supra* note 40, at 256 (noting that local governments have become less effective through the use of public authorities by "bypassing them or stripping them of particular functions").

61. *See* Steinhauser, *supra* note 57.

62. *See* A.T. Kearney,"Green" Winners, http://www.atkearney.com/index.php/Publications/green-winners.html (last visited on Sept. 10, 2009); *see also* Antonio Vives, *Corporate Social Responsibility: The Role of Law and Markets and the Case of Developing Countries*, 83 Chi.-Kent L. Rev. 199, 207 (2008); Jeff Civins & Mary Mendoza, *Corporate Sustainability and Social Responsibility: A Legal Perspective*, 71 Tex. B.J. 368 (May, 2008) ("Some commentators suggest we are about to reach the sustainability "tipping point"—the point at which the idea of sustainability becomes a strategic business imperative."); Jonathan Dee, *A Toy Maker's Conscience*, N. Y. Times, Dec. 23, 2007, § 6 (Mag.), at 34 ("According to…a marketing research firm, [ninety-one] percent of chief executives believe that a good corporate social-responsibility program creates shareholder value."). *See generally* David Vogel, The Market for Virtue: The Potential and Limits of Corporate Social Responsibility (2005).

63. *See generally* European Comm'n, Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility, *available at* http://www.eurofound.europa.eu/emcc/content/source/eu02002s.htm?p1=topic&p2=Corporate_Social_Responsibility (urging companies to consider "lifelong learning, work organization, equal opportunities, social inclusion and sustainable development."). *See also* A.T. Kearney, *supra* note 62.

64. *See* A.T. Kearney, *supra* note 62 at 1 ("A recent A.T. Kearney analysis reveals that during the current economic slowdown, companies that show a 'true' commitment to sustainability appear to outperform their industry peers in the financial markets."); *see also* Comm'n of the European Communities, Report on the Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, *available at* http://trade.ec.europa.eu/doclib/docs/2006/february/tradoc_127374.pdf; Stacy Perman, *Making a Profit and a Difference*, Bus. Wk., Apr. 3, 2009, *available at* http://www.businessweek.com/smallbiz/content/mar2009/sb20090330_541747.htm?chan=smallbiz_smallbiz+index+page_top+small+business+stories; *see also* Augustin Landier & Vinay B. Nair, Investing for Change: Profit from Responsible Investment (2008).

65. A.T. Kearney, *supra* note 62, at 1.

66. *See supra* note 6.

67. Jeffrey Hollender & Steven Fenichell, What Matters Most, 29 (2004) (stating that Corporate Social Responsibility ("CSR") is "an ongoing commitment by business to behave ethically and to contribute to economic development while demonstrating respect for people, communities, society at large, and the environment").

68. *See* B. Corporation, http://www.bcorporation.net/about (last visited Sept. 10, 2009) (describing B Corporations).

69. A hybrid is a legally recognized organizational form structured by combining for-profit and non-profit ideals. *See, e.g.*, Minn. Responsible Bus. Corp. Act, ch. 304A, § 2(2), 84th Legis. Sess. (Minn. 2006), *available at* http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S3786.0.html&session=ls84; H.B. 3118, § 2, 23d Leg. (Haw. 2006), *available at* http://www.capitol.hawaii.gov/site1/archives/2006/ (Search for HB 3118); B. 91, 2007 Gen. Assem., Reg. Sess. (N.C. 2007), *available at* http://www.ncleg.net/sessions/2007/Bills/Senate/PDF/S91v5.pdf; H.B. 39, 2007 Gen. Assem., Reg. Sess. (N.C. 2007), *available at* http://www.ncleg.net/sessions/2007/bills/house/PDF/H39v1.pdf.

70. *See, e.g.*, ISO/CD 26000, Guidance on Social Responsibility (Dec. 12, 2008), *available at* http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935837/ISO_CD_26000__Guidance_on_Social_Responsibility.pdf?nodeid=7795973&vernum=0; B. Corp., The B Ratings System, http://www.bcorporation.net/become/BRS (last visited Sept. 10, 2009); Ceres 20-20: Our 20-20 Vision, http://www.ceres.org/Page.aspx?pid=1081 (last visited Sept. 10, 2009); U.N. Global Compact, Corporate Citizenship in the World Economy, http://www.unglobal compact.org/ (last visited Sept. 10, 2009).

71. Interestingly, in the midst of the recession, some states have attempted to move public authority services entirely to the private sector. The Newspaper.com, Pennsylvania Tolling Deals Fail, http://www.thenewspaper.com/news/25/2556.asp (last visited Sept. 10, 2009) (detailing Pennsylvania's failed attempt to lease the Pennsylvania Turnpike for decades).

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