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## Are Laws Needed for Public Management Reforms? An International Comparison

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Fiscal Affairs Department

**Are Laws Needed for Public Management Reforms? An International Comparison**

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**Abstract**

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There has been widespread adoption of new laws to support new public management. In many countries that have implemented comprehensive and deep reforms, new or amended laws have fundamentally changed the role of the state and the budget processes supporting it. Paradoxically, far-reaching modifications to the legal framework for public management have been strongest in countries that often rely on executive decrees for introducing reforms. This reflects the fundamental nature of the changes, including introducing performance-oriented budgeting and enhancing fiscal transparency and accountability. Differences in political systems, policy preoccupations, administrative arrangements and legal cultures will prevent globalization of the legal framework for public management.

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## **I. INTRODUCTION**

Beginning in the 1980s, public management techniques changed radically in some OECD member countries. Budgets based on inputs and financial compliance were replaced by performance-oriented budgeting systems, with an emphasis on results, outputs and/or outcomes, and decentralized management in responsible organization units. The leading countries of public management reforms also radically changed their government accounting systems, personnel management systems, and internal organizational arrangements.

Much has been written on “new public management” (NPM) (see, for example, Mathiasen, 1999). The changes in the legal framework underlying NPM have been documented for individual countries. However, there is a dearth of comparative studies across countries on the extent to which relevant laws were amended, or new laws adopted, to provide legislative backing for public management reforms.

This study plans to fill part of the gap in the existing literature. Section II first discusses the scope of NPM and the purposes of public management laws, before considering the changes that may be needed in the traditional legal framework governing NPM. Based on a non-exhaustive review of the situations in OECD member countries, Section III examines the extent to which the legal framework has been changed to support NPM and the degree to which NPM reforms have been introduced without changing the law. The paper’s conclusions are presented in section IV.

## **II. ARE CHANGES IN THE LEGAL FRAMEWORK NEEDED TO SUPPORT REFORMS IN PUBLIC MANAGEMENT?**

### **A. The Scope of New Public Management**

Before one can study whether changes in the legal framework may be required to introduce NPM, it is essential to have a clear understanding of what is meant by NPM.

The definition of “public management” itself has been a subject of considerable debate. Some studies highlight the processes and organizational interdependencies *within* the public sector. Others stress that public management focuses on the merger of private management practices and traditional public administration, in the context of a division of society into state and civil society (Pierre, 1995).

One operational definition for NPM is that it “consists of deliberate changes in the structures and processes of public sector organizations, with the objective of getting them to run better” (Pollitt and Boukaert, 2000, p. 46). Can this definition cover all of the important areas of NPM, without losing focus on the essential features of an all-encompassing overall system?

In this study, the three main areas of reform are subdivided into (1) improved performance; (2) decentralized budget and management authority; and (3) greater transparency and

accountability (Box 1). These new emphases have been grafted on to “traditional” public sector administration.

### **Box 1. Components of Public Management Reform**

#### **A. Improved performance**

1. Reformulating and simplifying budget nomenclature: away from inputs, towards outputs and outcomes
2. Emphasizing economy, efficiency, and effectiveness, including introducing performance indicators
3. Improving financial management, including the use of accrual accounting instead of cash-based accounts
4. Improving delivery of government services to citizens
5. Introducing market mechanisms and allowing alternative suppliers of government services (contracting out)

#### **B. Decentralized budget and management authority**

1. Creating “arms-length” government agencies with managerial autonomy
2. Disengaging the State from productive activities (privatization)
3. Replacing controls of central ministries (of Finance and of the Civil Service) with decentralized control and audit by responsible managers in ministries and/or agencies. This includes delegation of recruitment of staff and setting of pay scales by decentralized managers.

#### **C. Greater transparency and accountability**

1. Clarifying roles and responsibilities of all players in public management
2. Providing Parliament and the public with more financial and nonfinancial information on government intentions, transactions and performance
3. Enhancing the accountability of the executive to parliament, and of agencies within the executive to the “center”
4. Strengthening the independence and functioning of external audit bodies

The *strengthening of macro-fiscal performance* can be distinguished from NPM. Modification of budget systems laws to introduce quantitative fiscal rules in response to the need to cut a large fiscal deficits or reduce public debt (e.g., those contained in the EU’s Growth and Stability Pact) do not necessarily require the systemic changes embodied in NPM.

### **B. The Purpose of Laws for Public Management**

The “legal framework” in this paper refers primarily to the body of high-level and ordinary laws that support the public management system. Although ordinances, decrees, regulations and instructions are also part of the “legal framework,” in order to simplify a vast subject, this study focuses mainly on the constitutions and laws that have been formally adopted by parliaments.

## **Constitutions**

Whether written or unwritten, the Constitution includes the establishment of the fundamental organizations of the State and the relationships between them. Constitutions generally include provisions and principles regarding:

- The legislature—its competencies and organization, and, should a bicameral parliament exist, the respective roles and powers of the two chambers.
- The executive—its role and structure. It may be headed by a president or by a prime minister, who in turn heads a Cabinet, whose powers may be established constitutionally.
- Sub-national governments—their establishment and competencies. In federations, the Constitution may include provisions for intergovernmental coordination.
- Constitutional bodies such as an external Audit Office or an independent Public Service Commission.

Constitutions may also contain basic principles for budgeting and administrative structures. All of these have important implications for the formulation and coverage of laws governing public management.

## **Purposes of laws relative to public management**

Laws supplement written constitutions.<sup>2</sup> There are two major reasons why laws governing public management may be adopted, namely to:

- specify sound general principles; or
- address specific problems.

Countries may adopt or modify laws for both reasons simultaneously. However, usually one of the two factors dominates, depending on a country's own legal traditions, including the perceived need to adopt a law as opposed to issuing internal regulations.

In some countries, particularly those in continental Europe with strong “public law” and “administrative law” traditions, it is considered important to incorporate the main principles underlying the public management system in formal law. These principles have been loosely grouped into two broad categories (attributed to Harlow, 1998), notably those that see *control*

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<sup>2</sup> In countries without written constitutions, various laws are part of the constitution.

of the administration as the primary function and those that give priority to *structuring* and the *systemization* of public administration, while also acknowledging a place for *controlling* public sector activities (for France see, for example, Debbasch, 1976).

In contrast, some countries fasten not on principles but on remedies. Particularly in the United Kingdom there has been a long tradition of distaste for adopting general laws. General principles are assumed to be understood by relevant players, in part because of conventions developed over centuries. This includes an important place to the “prerogative of the Executive” (Daintith and Page, 1999). Unlike in continental European countries, the distinction between private and public law is not marked.<sup>3</sup>

Irrespective of whether a law is adopted to enact general principles or to address specific public management problems, the executive, particularly the minister of finance and/or his advisors, may cause a new law to be adopted to enhance their own powers. In some countries (particularly those in Eastern Europe, e.g., Albania, Romania), bureaucrats may feel powerless to act unless there is a law to underpin their subsequent actions. Although the adoption of a law does help to clarify principles and rules, the law may become an end in itself, with the risk of building up a body of detailed legislation. Moreover, if there are weaknesses in capacity to implement and enforce the law, there is a strong possibility that laws become dead documents.

### **C. The Traditional Legal Framework for Public Management**

It is impossible to describe a single “traditional” legal framework for public management in OECD member countries, as they differ widely in the extent and manner in which they legislate principles. For example, a few countries have a strict hierarchy of law: high-level (“organic”) laws under which there are ordinary laws. Other countries have “framework laws” to provide principles to be included in laws pertaining to different levels of government. To simplify this problem, two extremes of “traditional” frameworks are first examined, after which a “third way” is examined.

#### **The legislate-the-principles countries**

Although the scope of public management is wide, the number of basic principles to incorporate in the legal framework is limited. For example, principles underlying budget preparation processes—important component of public sector management—are well known in continental European countries. The example of Belgium is described in Box 2. To these principles, other principles such as authoritativeness, accountability, transparency, stability and performance (or efficiency and effectiveness) may be added, to obtain a full set

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<sup>3</sup> The concept of “public law” is viewed as a recent importation into the United Kingdom (Allison, 1997). The traditional distinction is between common law and statutes adopted by parliament.

of principles pertaining to at least the budget system, if not the entire public management system.

**Box 2. Principles Underlying the Belgian Budget Preparation System**

- Annual basis of budget.
- Universality—the budget and accounts cover revenues and expenditures comprehensively; expenditure are recorded on a gross basis—revenues are not earmarked for specific expenditures.
- Unity—there is one common pool for all revenues which are authorized by parliament at the same time as expenditures, in a single document.
- Specialization—expenditures are authorized only for specific purposes, which have traditionally been based on inputs.
- Publication—of the budget and its accounts.

Source: van de Voorde and Stienlet, 1990.

One of the problems with the “legislate-the-principles” approach is that the general principles usually have a number of exceptions. Laws may therefore be obliged to devote considerable space to specifying the allowable exceptions. For example, the 2001 Organic Budget Law in France contains several articles relating to earmarked funds, other special accounts, and budget annexes, all of which violate the unity and universality principles. Legislating for exceptions adds complexity and rigidity in laws and accompanying regulations.

Budget systems laws are important components of the legal framework for public management. In continental European countries, “administrative law” governs the State and its interactions with citizens. Underlying legal principles have been set forth in a monumental comparative study by Schwarze, 1993. On the basis of such principles, a number of European countries have embodied administrative procedures into a single law, including in Austria (since 1925), Denmark (1985), Germany (1976) and Spain (1958) (See SIGMA, 1999). Civil service laws, which specify the rights and obligations of civil servants, are widespread in such countries. Also, written laws are supplemented by judge-made laws (decisions of administrative courts), which fragments the administrative law system.

Countries that attach high importance to administrative law also view the State as the central integrating force within society. An important part of the State’s business is geared toward preparing, promulgating and enforcing administrative law. Many senior civil servants are trained in law and the instinctive bureaucratic stance is one of rule-following and legal control.

Centralization of authority has often characterized public management in such countries. The legal basis for that authority is both law and detailed executive decrees that lay out the roles and organization of central authorities. Rigid laws allow less room for flexibility in management than in the second model described below.

#### **“Westminister” countries<sup>4</sup>**

In a second model, the notion of the State is played down. It is perceived to fall at the other extreme of the “legislate-the-principles” model.<sup>5</sup> The notion of the State is replaced by a rather obscure concept, “the Crown,” which represents the government as a whole, without having its own legal personality. Within the Executive, it is the Cabinet (itself an extra-legal body) and individual ministers who are powerful—the latter being responsible for their actions before parliament. The place, competencies and powers of “the Crown” as a collective body are limited to those that are absolutely necessary.

Although law is an important component of the governance framework in such countries, it is in the background, rather than the forefront. Pragmatism and flexibility are prized qualities, being placed above adherence to the legal framework and technical correctness. Civil servants in these countries perceive themselves to be working for individual ministries or agencies serving the wider public interest, as opposed to representing the noble interests of “the State” (this is partly because “the Crown” is a more nebulous term).

Public management laws of countries in this group have not been formulated using the backdrop of a comprehensive set of principles. Traditionally, laws have provided piecemeal coverage of the different facets of public management and administration. The details of the legal framework for public management tends to be delegated to secondary legislation issued by a powerful executive (Cabinet and/or strong central ministries), possibly on the basis of strong inherited powers.<sup>6</sup> This allows for more flexible management, as the constraint of having to change the law to introduce changes is less present compared with continental European countries. The drawback in these countries is that Parliament is by-passed more frequently than in the first model. Thus, in a certain sense, public management is practiced less democratically—reforms may emanate from unelected civil servants support powerful Cabinets, rather than from elected representatives of the people.

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<sup>4</sup>In the “Westminister” parliamentary system the prime minister is the head of the largest political party in Parliament and is the leader of a powerful Cabinet, established on the basis of convention. The Cabinet is composed of elected members of Parliament. Cabinets are powerful and they makes the bulk of policy decisions. However, Cabinets crumble (infrequently) when there is a crisis of confidence that brings down the government.

<sup>5</sup> Pollitt and Bouckaert (2000), pp. 52-54, describe this as the *Rechtsstaat* model.

<sup>6</sup> In the United Kingdom, these powers may be based on the royal prerogative—powers of the kings inherited from earlier ages. Courts in the United Kingdom recognize the prerogative as a legitimate source of law.

### **“Third way” countries**

Is the above bipolar characterization an adequate representation of all cultural and legal traditions in public management? Northern European countries have generally shied away from being based on highly legalistic principles. In the case of the Netherlands there was conscious “de-juridification” after 1945 (Pollitt and Boukaert, 2000, p. 54). However, it was not replaced by a British-based model. In Scandinavian countries, much value is placed on reaching a broad-based consensus (c.f., the narrower base for consensus in the Westminster model). This is necessary given the multiplicity of political parties in parliaments of these countries and the generalized need to form coalition governments. Also, considerable use is made of independent Commissions of Enquiry, composed of academics and employer/employee representatives. Once consensus is reached at political level, a “Decision”—either by government or by parliament—may be taken, in lieu of adopting a formal law. In several of these countries (e.g., the Netherlands, Sweden), “coalition agreements” of the political parties forming the government have, to some extent, obviated the need to later adopt laws to implement changes in public management. In countries with a history of minority governments (e.g., Denmark), informal agreements with opposition parties in parliament also needs to be reached. Thus, in countries where consensus is valued—or highly necessary—and where there is relatively less emphasis on formality, the need to adopt law to reform public management is diminished.

### **D. Why the Legal Framework May Require Changes**

Public management covers a wide range of issues, from budget performance and financial management, through to personnel management and public sector organizational arrangements. In this subsection, it is argued that to introduce NPM reforms, particularly for certain areas of “improved performance” and “enhanced transparency and accountability” (parts A and C of Box 1), changes in written statutes are likely to be required.

Prior to discussing specific areas of NPM below, it should be noted that Parliament could adopt a law to strengthen its own powers in any area public management. This could arise in two ways. First, when the Constitution confers considerable power on the executive, parliament could alter the “imbalance” of power in its favor by adopting a law. Second, if the Constitution already grants strong powers to the legislature, the initiative for new laws may come from the legislature, in order to expand further its control over the executive in matters pertaining to public management. This is especially the case when there are strong separation of powers of the legislature and the executive, or the presence of a powerful second chamber (e.g., the United States and, increasingly, Germany)

### **Improved performance**

**Different structure for budget appropriations.** Budget systems laws include basic provisions for the classification of expenditures. Traditionally, “chapters” for administrative units (Ministries etc.) were broken down by inputs, including salaries, goods and services,

transfers, and investment. The new performance orientation of budgets requires a complete change in appropriation structures. Budget systems laws need to change to introduce radical changes. The possibility of introducing “net appropriations” would also be needed should a reforming country allow agencies to retain their “own” revenues (raised from fees for services) for their “own” services.

**Emphasizing the three Es of economy, efficiency, and effectiveness.** Traditional legal frameworks have not emphasized the three Es. The concept of “performance management” was largely unknown 30 years ago. In “administrative law” countries, the emphasis was on ensuring laws were in place to regulate the special relationship between the State and civil servants, based on *common* management functions and life-long careers. *Specific* management functions, guided by the three Es, were not embodied in traditional administrative procedure laws or civil service acts. Similarly, the idea of introducing private sector principles into public management would have been considered heresy. Either new laws or a revamping of existing laws are required to introduce a radically new vision of public administration.

**Changed basis for government accounting.** Accrual accounting is considered a critical component of NPM, as it allows a full costing of expenditure policies, including purchases of non-financial assets. With accrual accounting, the government accounting framework becomes more closely aligned with that used in the private sector: operating statements and balance sheets are presented to Parliament in addition to the traditional cash flows of revenues and expenditures. A change in law may be needed to introduce an accrual accounting framework and is certainly needed if law is to specify the format of the accrual-based statements to be presented to parliament. Introduction of accrual budgeting (in addition to accrual-based financial reporting) would certainly need a new law. A separate Public Accounting Law is usually unnecessary—such a law risks introducing detailed technical concepts that are better confined to (accounting) decrees and manuals.

**Improved delivery of public services.** In the drive for better performance, public production and public funding have been decoupled. Existing legal frameworks may not be conducive for allowing increased competition through competitive tendering, new contracting-out arrangements for services previously provided in-house, vouchers, or public-private partnerships for projects.<sup>7</sup> To allow the introduction of market-related public management, new legislation may be needed, although in some areas, new regulations may suffice.

### **Decentralization of budget and management authority**

**Political decentralization.** If reforms encompass *political* decentralization, i.e., the transfer of functions previously conducted by central government to local governments

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<sup>7</sup> Lundsgaard (2002) discusses the use of market-related instruments for improved public management.

(regional/provincial and county/municipal councils), it is almost certain that a new decentralization law, or maybe even a constitutional change, would be required.

**Administrative decentralization and “agencification.”** First, one can distinguish: (1) deconcentration, whereby largely unchanged central ministries delegate more authority to regional entities; and (2) “agencification”—the creation of new autonomous executive agencies. These differ mainly by the extent of their independence from “mother” ministries, their governance structures,<sup>8</sup> and the nature of their activities.

Deconcentration is a reshuffling of responsibilities within the executive. Such changes could be introduced without changes in law. In contrast, “agencification” introduces fundamental changes in the way State budgets are prepared and reported to Parliament. New laws would be required to specify this new form of governance, especially if agencies’ “own” revenues are no longer incorporated into State budget revenues. An exception could occur if agencies are not required to report directly to Parliament, but only to their “mother” ministry. However, this runs counter to the enhancement of transparency. Fragmentation is seen as one risk of “agencification” (Schick, 2002).

**Privatization.** Questioning the traditional role of the State—and changing it to become more like private enterprises—is an important component of NPM. In general, the State has withdrawn from commercial activities, which have been viewed as being better accomplished by private sector entities. These reforms are highly political, as public enterprises—even if loss-making—have been conduits for boosting publicly-supported employment. Labor representatives have been particularly vocal when restructuring plans have been announced. Hence, any draft laws to review public ownership of commercial activities—even if only corporatization in the first instance—necessarily need to be debated openly in parliament. Changes in the legal framework could take two forms: (1) a new general framework for commercialization and/or privatization of public enterprises; and/or (2) revisions to specific laws relative to the establishment of particular public enterprises.

### **Enhanced transparency and accountability**

**Clarifying the roles of ministers and heads of ministries/agencies.** NPM incorporates a focus on the outcomes of policies. Cabinet ministers are responsible, either individually or collectively, to parliament for outcomes. They need to report to parliament the results of ex ante agreements with their chief executives—the heads of policy-implementing ministries. The roles and responsibilities of ministers, and their chief executives who produce outputs in pursuit of politically-agreed objectives, need to be specified. To introduce far-reaching clarifications in this area, the existing legal framework would need to be revamped

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<sup>8</sup> Governance includes the establishment of a governing board; the appointment and discharge of governing board members and chief executives; and the responsibilities, roles and authority of governing boards and chief executives.

completely, especially if new contractual arrangements between ministers and chief executives were to be introduced.

**Providing Parliament with more information.** Traditionally, the legal framework for fiscal reporting has been weak. First, regarding fiscal policy intentions and anticipated results, the principle of annuality resulted in undue emphasis on the year ahead. As a result, governments have not been legally required to propose to parliament its medium term fiscal strategy. In this context, quantified and binding medium-term targets for public debt and/or fiscal balances are desirable for macroeconomic stability. Second, the frequency and content of in-year, annual and pre-election reporting on fiscal developments has not been well specified. Third, traditional budget laws have not required the government to provide a number of specific disclosures to parliament. These include a clear statement of the rationale for introducing new policies, reasons why there are deviations from previously-announced strategies, assumptions underlying budget projections, statements of fiscal risk and contingent liabilities, and results—as measured by performance indicators. Fundamental modifications of existing budget systems laws are needed to introduce the fiscal transparency requirements embodied in international codes of good practices (see IMF, 2001; OECD 2001).

**External audit.** INTOSAI’s “Lima Guidelines” recommends that five good principles for supreme audit institutions (SAIs) be embodied in Constitutions.<sup>9</sup> Traditionally, not all OECD member countries have embodied these principles in lower-level laws, let alone Constitutions. In addition, under NPM, the emphasis on results-oriented budgeting changes the emphasis of audit from financial compliance to value-for-money audits and reviews of operational efficiency and effectiveness (World Bank, 2001). NPM also introduces the principle of contestability, which, when applied to SAIs, allows private-sector auditors to compete with the SAI on equal footing. Finally, with computerized financial and performance management information systems, Parliament is likely to demand more timely delivery of the final report of the SAI than in the past. Revisions to the legal framework of SAIs are likely to be needed to introduce NPM-related reforms.

### III. THE LEGAL FRAMEWORK AND PUBLIC MANAGEMENT: COUNTRY EXPERIENCE

The previous section argued that laws would need to change to introduce most public management reforms. New or modified laws would also be necessary if there are gaps in traditional public management laws. Some reforms, such as the reorganization of functions *within* the executive, could be addressed by issuing new executive decrees or Orders. This section examines the extent to which the legal framework for public management has in fact

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<sup>9</sup> INTOSAI = International Organization of Supreme Audit Institutions. The issues recommended for inclusion in Constitutions concern the (1) establishment of the SAI; (2) independence of the SAI—functional and organizational; (3) independence of SAIs’ members, including procedures for removal; (4) relationship between the SAI and Parliament; and (5) audit powers of the SAI. See [www.intosai.org](http://www.intosai.org).

changed in OECD member countries. The focus is mainly on the countries that have reformed public management laws the most. The review is not exhaustive.

### **A. Changes in Constitutions**

There are two main<sup>10</sup> areas where written Constitutions have changed in NPM-related areas. However, amendments were largely motivated by reasons other than NPM. This subsection also discusses whether “constitutions” have changed in countries where constitutions are unwritten.

#### **Political decentralization**

In providing greater autonomy to sub-national governments, some countries, including Belgium (1989) and Spain (1979), changed their Constitutions. However, in these countries, along with Germany, whose Constitution was changed in 1990 to incorporate the eastern *Länd*, the changes were made by the central authorities in response to national and/or regional political pressures. These constitutional changes clarified the roles and responsibilities of central and sub-national governments—one item of NPM (see C.1 of Box 1). However, Constitutions in these countries were not changed specifically to introduce NPM.

In several unitary countries, new decentralization initiatives have been introduced by law during the past 20 years or so (e.g., France—1982, followed by additional new laws in 2004;<sup>11</sup> Ireland—1991; Italy—various years; Sweden—1991; United Kingdom—a new Local Government Act in 1992 and regional devolution to Northern Ireland, Scotland and Wales in 1998). Such laws concern primarily the central-local tax and expenditure competencies, and/or the intergovernmental transfer mechanisms, rather than NPM issues. Nonetheless, in some countries (e.g., Sweden’s Local Government Act, 1991), local governments had new demands placed on them for financial planning and accounting, in exchange for increased autonomy to choose their own organizational structures. As a result, some municipalities adopted a purchaser-provider model (Gustafsson and Svensson, 1999).

#### **External audit**

Under NPM, there has been a re-examination of the role of external audit, especially in countries where its independence from the executive branch was not formally established. In

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<sup>10</sup> Constitutions have also been changed to introduce better fiscal management (e.g., United States—1996 line-item control of federal government’s budget by the President (later rescinded); Germany—1969 changes for better overall fiscal management and new intergovernmental coordination mechanism).

<sup>11</sup> Notably a new Organic law on the financial autonomy of local governments, as well as a new decentralization law transferring central government competencies to regions, *départements*, and municipalities.

Finland and Sweden, in 2000 and 2002 respectively, Constitutions<sup>12</sup> were amended to ensure that their SAIs serve primarily the needs of Parliament. For Sweden, the Parliament (*Riksdag*) Act, which has near-constitutional status, was also amended. Both countries also adopted new laws<sup>13</sup> specific to the external audit function. Norway also adopted a new National Audit Office Act in 2004. Denmark's Auditor-General Act 1976 was amended in 1991 and 1996. In all four countries, the modifications in law were made in order to:

- strengthen further the powers of parliament to exercise oversight and control of the executive branch's implementation of the annual budget;
- reinforce the independence of auditors from the executive branch;
- clarify governance structures, and
- emphasize even more the three Es of economy, efficiency, and effectiveness.

### **When do constitutions change if they are unwritten?**

The United Kingdom and New Zealand are special cases in that they do not have written Constitutions.<sup>14</sup> For the United Kingdom, when important legal changes occur and are not reversed, some lawyers—particularly those who view the English constitution as an empirical record and/or a system of values—would argue that the Constitution is changing (Daintith and Page, 1999). Since some of the constitutional values include those cherished by NPM, especially “open and accountable government”, one could argue that the Constitutions in these two countries changed when their respective Parliaments adopted new laws pertaining to budget transparency and accountability, as well as for external audit.

### **B. Introduction of Special New Laws to Modernize Public Management**

To fill gaps in existing legal frameworks, some countries have introduced far-reaching reforms by adopting completely new laws.

### **Improved performance**

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<sup>12</sup> Sweden's Constitution consists of four fundamental laws, of which the most important for public management is the Instrument of Government Act, 1974.

<sup>13</sup> In Finland, the State Audit Office Act, was adopted in 2000. Sweden adopted the Auditing of State Activities Act (2002) and the Swedish National Audit Office Terms of Reference Act (2002).

<sup>14</sup> Although New Zealand adopted a Constitution Act in 1986, it is only one of several laws considered to have constitutional status. Other statutes include the Treaty of Waitangi Act 1975, the Bill of Rights Act 1990, the Human Rights Act 1993 and the Electoral Act 1993. Canada also does not have a comprehensive single-document “constitution”: it has two Constitution Acts and a number of other acts of constitutional significance.

**Performance-oriented budgeting.** To improve the efficiency and effectiveness of federal government programs in the *United States*, the Government Performance and Results Act (GPRA) was adopted in 1993. This Act requires federal agencies to prepare multi-year strategic plans, annual performance plans, and annual performance reports. *Sweden* adopted its first-ever State Budget Law in 1996 to clarify the role of the government in budget processes. This law formalized performance-oriented budget procedures that had already been introduced prior to 1996.<sup>15</sup> It emphasizes key values of NPM, including the aim of “a high level of effectiveness and good economy in government operations” and that “the Government shall report to Parliament on the objectives aimed at and the results achieved in various areas of operations.” *France* took advantage of a window of opportunity for budget reform and adopted a new Organic Law relating to annual budget laws in August 2001. As from 2006, annual budgets will be adopted by about 160 programs (including those for budget annexes and special treasury accounts, which are not being abolished by the reforms). An annual budget showing objectives and results will replace the traditional budget that shows about 850 input-based line items. Accrual accounting is also being introduced to accompany the budget reform, which will result in enhanced transparency for parliament and new accountability for budget program managers.

**Improved financial management and/or accrual accounting.** *Australia* adopted a package of new legislation in 1997, with two laws—the Financial Management and Accountability Act and the Companies and Commonwealth Authorities and Companies Act—providing a comprehensive framework for proper management of public money and property in government departments, agencies, and public enterprises. *Finland* adopted a relatively brief State Budget Act in 1988, which lays out budget and accounting principles. In it, the minister of finance is delegated with considerable authority. The *United Kingdom* formally endorsed the introduction of accrual accounting as the basis for government departments individual accounts, as well as for the whole of government, in the Government Resources and Accounting (GRA) Act, 2000. In so doing, certain sections of the previous long-standing legislation—the 1866 Exchequer and Audit Act—were repealed. In the *United States*, several laws have been adopted to improve financial management, including the Chief Financial Officers Act, 1990, the Government Management Reform Act, 1994, and the Federal Financial Management Improvement Act, 1996. These, inter alia, require audits of agencies’ accounts according to federal government accounting standards.

**Contracting Out.** Some countries adopted new laws to encourage deregulation, including the *United Kingdom*—the Deregulation and Contracting Out Act, 1994 and the aforementioned GRA Act, which provided financial assistance to a body established to participate in public-private partnerships. In the *United States*, following the National Performance Review in 1993, 85 laws to “simplify” government and encourage outsourcing—including the Government Management Reform Act, 1994—were passed by 1998.

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<sup>15</sup> See Swedish National Audit Office (1998) and Swedish National Financial Management Authority (2003).

## **Greater transparency and accountability**

**Fiscal responsibility and “honesty”.** In *New Zealand*, a Fiscal Responsibility Act was adopted in 1994.<sup>16</sup> It sets out to increase the transparency of policy intentions, bring a long-term focus to budgeting, disclose the aggregate impact of the budget in advance of the detailed annual budget, ensure independent assessment and reporting of fiscal policy, and facilitate parliamentary and public scrutiny of budgetary information and plans.<sup>17</sup> In *Australia*, a Charter of Budget Honesty was adopted 1998. It contains similar reporting obligations as in the New Zealand Act. In addition, it requires costings of publicly announced pre-election policies—for both the Government and the Opposition. Likewise, the *United Kingdom* adopted a Code of Fiscal Stability in 1998,<sup>18</sup> based on five principles of fiscal management: transparency, stability, responsibility, fairness and efficiency.

**New external audit arrangements.** Besides Finland, Norway and Sweden (see above), at least three other countries adopted new laws to reinforce the independence of the Auditor-General and clarify the SAIs’ mandates. These are *Australia*—Auditor-General Act 1997; 2000; *New Zealand*—Public Audit Act, 2001; and the *United Kingdom*—Audit Commission Act, 1998. Interestingly, the Acts were all adopted at least a decade after the “main wave” of NPM reforms.

## **Privatization**

In *Korea*, the government (not Parliament) established three governing principles, as well as a Privatization Steering Committee to coordinate the privatization process under way since 1998. Subsequently, laws were enacted or amended to deal with post-privatization issues. For example, for demonopolization and the allowing of competitive pricing for the electricity industry, three laws were adopted (p. 62-68 of Korea, 2003). *New Zealand* adopted the State-Owned Enterprise Act in 1986 to allow the corporatization of state enterprises along private sector lines.

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<sup>16</sup> In December 2004, this act was repealed when its provisions were merged with the Public Finance (State Sector Management) Act, 2004.

<sup>17</sup> For further details see New Zealand Treasury (1996)

<sup>18</sup> The Finance Act 1998 provided the legal underpinning of the Code, which the Government must lay before House of Commons, which adopts it by Decision. Under the Finance Act, the Government may amend the Code.

### C. Changing Existing Public Management Laws

This subsection examines areas where existing laws have been modified, in some cases substantially. In other cases, amendments have been less drastic, in line with a more cautious approach to reform.

#### **Budget system laws**

A number of countries recognized the need to change budget systems laws in fundamental ways, especially the general principles. Although the *annuality* of budget appropriations remains, the annual budget is now required to be placed in a medium-term macro-fiscal framework in many countries.

In 1989, *New Zealand* substantially modified the previous Public Finance Act, changing the legal basis for annual appropriations from one based on inputs to one based on classes of outputs. In the *Netherlands*, the 1976 Government Accounting Law was replaced in 2001. The revised Act lays the framework for budget preparation, as well as covering all important accounting and audit issues, including specifying the Court of Account's responsibilities. The law specifies that ministers are responsible for "the effectiveness of the policy underlying their budgets" and for "conducting regular operational efficiency audits." Unlike in New Zealand (or France), the new law did not specify that appropriations would be on the basis of programs or outputs. Nonetheless, a program-oriented approach is being adopted and the number of line-items in the annual budget is being reduced substantially. In *Spain*, the 1977 General Budgetary Act was replaced in 2003 by a new law that aims to introduce a performance-oriented budget system. This law complement new acts on budgetary stability adopted in 2001, which incorporated the principle of stability of the EU's Stability and Growth Pact into domestic law.

Other countries have been more timid in amending budget systems laws. For example, the Federal Budget Code, 1969, in *Germany* was amended in the late 1990s to allow greater freedom for budget managers to reallocate expenditures between budget lines and to carry over expenditures into the next fiscal year. Overall, few changes have been made in budget systems laws in Germany, which also include the Law to Promote Stability and Growth, 1967 and the Budget Principles Law, 1969. The annual budget is still based on inputs, with thousands of detailed line items, classified according to an accounting framework that is used by all levels of government (see Box 3 of IMF, 2003).

#### **Public service laws**

Amendments to public service laws have tended to follow the reforms of budget and financial management systems. These have aimed at introducing greater flexibility in public sector personnel management, including the decentralization of decision-making and the introduction of competitive labor market principles in some countries. Countries that have revamped previous laws include *Australia*—Public Service Bill, 1999; *Canada* – Public Service Reform Act, 1992; *Finland* – State Civil Servants Act, 1994; *Germany*—Public

Service Reform Act, 1994, and amendments to Federal Civil Servants Law, 1996; *New Zealand*—the State Services Act, 1988; *Sweden*—modifications to Public Employment Act, 1990; and *United States*—1978 Civil Service Reform Act (including creation of a Senior Executive Service) and the Federal Workforce Restructuring Act, 1994.

*Spain* replaced its previous “Organization and Functioning of the General State Administration” Act in 1997. This law specifies and regulates the functions and structure of the State administration, autonomous public organizations and public enterprises. It specifies common internal management structures of ministries, from ministers and state secretaries down to deputy director generals. Some countries would neither impose uniform structures, nor regulate by law matters regarded as internal to the executive. For example, during the period of intense NPM reform in the late 1980s, the New Zealand Legislative Advisory Committee of Parliament advised that “legislation should not in general be enacted for administrative matters.”

More generally, in Anglo-Saxon countries, the private sector was upheld as the new standard for public servants. By introducing fixed-term contracts for senior civil servants, there was a loss of the security of tenure. Promotion and salary increases were increasingly based on merit rather than seniority and qualifications. A uniform and centralized civil service was largely eliminated. In some countries, senior civil servants were provided with the authority to recruit, dismiss and set remuneration levels according to skill requirements. Most of these provisions were explicit in the new laws adopted in Australia and New Zealand. In the case of the *United Kingdom*, the Civil Service (Management Functions) Act, 1992, permitted delegation of authority to the Executive to allow implementation of flexible and decentralized personnel management.

Codes of Conduct for civil servants have also been adopted in many countries. These lay out principles for the integrity of civil servants and—in the countries where the civil service is apolitical—for their impartiality. In the case of the United Kingdom, a Ministerial Code—laying out the duties of ministers toward the civil service, as well as requiring them to be “as truthful as possible with Parliament”—was adopted in 1997 following the terms of the House of Commons Resolution on Ministerial Accountability. See [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/ministers/ministerial\\_code](http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code).

### **Public procurement laws**

Many European countries replaced previous public procurement laws with new legislation, mainly as a result of EU procurement directives. Countries include Denmark (1995), Germany (1998), Hungary (1999), Italy (1998, by legislative decree), Netherlands (1993, by Resolution), Poland (1994), Spain (1995), and Sweden (1994).<sup>19</sup> In the United Kingdom, the EC procurement regime is given effect by four regulations.

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<sup>19</sup> See country summaries in Annex to SIGMA (2000).

#### **D. Reforms Introduced Without Changes in Law**

This section examines the few areas where, in some countries, NPM reforms have not been introduced by changing the law.

##### **Creation of agencies (in the United Kingdom) and their governance**

By virtue of strong delegated powers to the executive (reinforced by the Ministers of the Crown Act 1975) and a written concordat of 1988, the United Kingdom created “Next Steps” agencies. Distinguishing features of these agencies are: (1) they do not have their own legal personality (being under a Department, with the minister responsible for defending agency outcomes before Parliament); and (2) the written “framework documents” between chief executives and sponsor departments are not legally binding documents. In “administrative law” European countries, it would be inconceivable that 75 percent of civil servants in ministries/departments could be moved to being under the authority of chief executives of agencies without adopting a new law.

The governance of semi-autonomous agencies—particularly their indirect accountability to Parliament is now recognized as a problem in countries where agencies are entrenched. To address governance weaknesses in New Zealand, a Crown Entities Act was adopted in December 2004. Agencies’ governing boards will be more accountable to ministers, who in turn will have greater powers to appoint and dismiss.

##### **Performance contracting more generally**

It has been argued that contracting between public sector entities in the form of enforceable contracts would be inefficient, as transactions costs would be high (e.g., Petrie, 2002). In contrast with continental European countries, in Westminster countries, high-level administrative courts are not in place to enforce legally-binding performance agreements (e.g., between ministers and chief executives). Similarly, funding relationships, at least within the core public sector, may be better governed by informal long-term relational contracting, rather than the strict legal contracting. In general, performance contracting and the separation of the purchaser from the provider have not been embodied in law.

##### **Accrual accounting: putting meaning to GAAP**

Although recent laws in several countries require “generally accepted accounting standards (GAAP)”, it is generally up to the executive to issue decrees to elaborate on how the new accounting norms will be implemented. To introduce accrual accounting within ministries and public bodies, collaboration with the external audit office and, in some countries, independent Accounting Standards Boards, is taking place.

## **Performance-related pay**

Although laws were amended to introduce greater flexibility in public sector personnel management, new arrangements for performance-related pay and promotion have often been introduced by regulation. Under NPM, decentralized managers are given latitude for deciding employees' performance-related salary supplements. Even if personnel management systems remain centralized, the details of performance-related salary and promotions are usually governed by decree.

### **E. Neither Change in Law nor Introduction of New Public Management**

Some EU countries, including *Austria, Belgium, Germany, Italy, Spain, and Portugal* have been particularly concerned with macro-stability issues, especially the need to respect the Maastricht criteria. These concerns, along with strong regional autonomy and/or federal-regional tensions, have resulted in the adoption of new laws for macro-fiscal management, including domestic “stability pacts” to clarify how EU directives on general government deficits and debt are to be applied at sub-national levels. Preoccupation with these issues may have constrained adoption of performance-related reforms in budgeting. Also, changes in personnel management in these countries have often been timid, except in cases where powerful public sector trade unions have “bought into” the proposed reforms.

*Japan* and *Korea* have reformed some aspects of public administration such as reorganizing government ministries and other public bodies. However, they are moving towards a performance-oriented reforms cautiously. In both countries, the multiplicity of special funds constrains budgetary transparency and accountability arrangements. Following the Asian crisis, these countries initially preoccupied with better control of the fiscal aggregates. In this area, it has proven difficult to introduce long-lasting laws. In *Japan*, a Fiscal Structural Reform Act was adopted in 1997. Partly because of the effects of the Asian crisis, the Act was suspended in late 1998, so as to allow the introduction of a large fiscal stimulus package. In *Korea*, the National Assembly was presented with a draft Fiscal Responsibility Bill in June 2001. The bill was rejected, mainly because Parliament could not agree on whether government-guaranteed debt should be included in the definition of national debt. In 2003, a performance management system (PMS), requiring line ministries to set up performance goals and indicators, was introduced without adopting a new law. The PMS is being progressively implemented—all ministries are planned to be covered by 2008. Furthermore, a National Budget Bill has been drafted, requiring annually-updated national fiscal plans covering more than three years. Already in October 2004—prior to formal adoption of the Bill—a 5-year national fiscal management plan was submitted to Parliament.

#### IV. CONCLUSIONS

The introduction of *fundamental* reforms in public management requires either revisions to existing laws or the introduction of new laws. Parliaments have been interested in clarifying and strengthening their own role in public management, including the quality of information they receive—transparency and accountability issues. As guardians of the public purse, Parliament wishes to see that money is well spent—the NPM focus on performance and the three Es—economy, efficiency, and effectiveness.

The evidence reviewed in this paper points to widespread changes in laws. Changes in laws appear to have been greatest in AngloSaxon countries that do not have a strong tradition of making changes via new statutes. This is a reflection of the depth and breadth of the far-reaching reforms in public management. The legal framework in Australia, New Zealand, and the United Kingdom has been radically changed compared with that of 30 years ago. This is despite the strength of the executive branch of government in these countries, where it may have been expected that changes would be introduced by executive decree. However, since the introduction of performance-oriented budgeting, and improvements in transparency and accountability affect parliament, civil servants and society in fundamental ways, new laws have been adopted. The introduction of autonomous agencies—a far-reaching reform—is one area of NPM that has not always been introduced by law in these countries (although New Zealand found it necessary to adopt a new law to clarify the responsibilities of autonomous agencies, which were perceived to be enjoying too much independence from parliamentary oversight).

Fewer of the “legislate-the-principles” countries have made such fundamental changes in the laws underpinning public management. In several of these countries, although the role of the State has been questioned, it has not fundamentally changed. This raises the question as to whether the legal system itself—and a culture of legality—is a constraining factor for introducing public management reforms. Alternatively, are the political risks of challenging the conventional wisdom regarding the role of the State and the entrenched “separation” of political and administrative systems (where there are strong civil service unions that may resist change) too high? These issues have not been fully researched in this paper, which has noted that several of continental European countries have been preoccupied with the introduction of new legal arrangements to address macroeconomic stability issues, including ensuring that sub-national governments participate in achieving nationwide targets for fiscal deficits and debt. This preoccupation may have prevented the changing of other laws to introduce NPM reforms.

“Third way” countries—those less legalistic, but not dominated in decision-making so exclusively by powerful executives—have also adopted a number of new laws to introduce public management reforms. Finland, Norway and Sweden changed their constitutions or laws to enhance the independence of the external audit office and to clarify budgetary powers of the government vis-à-vis Parliament. In Finland, the constitutional reform had been ongoing for a long time and the constitution was not changed solely to introduce one new NPM feature. In general, much public management is left to regulations or informal

arrangement in Nordic countries—Denmark and Norway are exceptional among OECD member countries in that they do not have a formal law to govern the budget system. Rather, guidelines or regulations on budget processes are issued by the ministry of finance (Denmark) or Parliament (Norway). Thus, for these two countries, only regulations have to be changed to introduce a new budget-related NPM issue. In these countries, the formalities to introduce NPM are procedurally less complex and changes are therefore easier to introduce than in continental European countries, where the requirement to change an existing law is viewed as the starting point for introducing NPM. By contrast, Nordic and Westminster countries may only introduce new laws after there has been experimentation with change. In these countries, law lags the introduction of NPM, rather than leading it, as in continental Europe. This reflects differing societal attitudes toward the importance of law.

Summing up, the deeper the public management reforms, the more fundamental the revamping of the legal framework. Completely new laws in some Anglo-Saxon countries have filled gaps in their previous legal frameworks for public management. These new laws have been studied in countries that have been slower to embrace NPM. Some elements of NPM laws have been copied internationally. This may indicate that the legal frameworks for public management are converging internationally. However, the legal framework for public management needs to be placed in the wider context of differing political systems, policy preoccupations, administrative arrangements, and societal attitudes towards the State. Also, the role of Constitutions, the hierarchical structure of laws, attitudes toward respecting the law, and administrative capacity to enforce laws, are also relevant in understanding country-specific legal frameworks. These factors could be further studied. However, even in the absence of a full study of such influences, it appears improbable that globalization of the legal framework for public management is imminent.

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