

15. Ethical leadership in public-private partnerships: learning from an Australian 'great controversy'?

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INTRODUCTION

The idea of public-private partnerships (PPPs) has evolved from the adoption by governments over the last few decades of public sector reform consistent with the market-based model of public governance, derived from neoclassical economic concepts. To this end there is now a global acceptance that governments do not have to be direct providers of all public services and programs. Indeed governments can enter into partnerships with the private or not-for-profit sectors to provide programs and services in a way that may not be possible if governments and public sectors were simply acting alone (Bovaird 2004a, 2004b; Greve and Hodge 2005; Greiner Interview 2007).

As numerous writers now report PPPs contribute significantly to economic and social infrastructure development globally, in both developed and developing economies, and involve billions of dollars of public and private finance annually (New South Wales (NSW) Treasury 2001; Australian Procurement and Construction Council 2002; Barratt 2003; Brown and Pitoski 2003; Pollitt 2003; Wettenhall 2003). Supranational organizations such as the World Bank (WB) (2005), the European Union (EU) (2004) and the United Nations (UN) (2004) for example support the use of PPPs in a broad range of initiatives including those associated with the achievement of the UN's Millennium Goals (UN 2005). This is especially pertinent in developing countries where initiatives such as those that address the alleviation of poverty are concerned. PPPs as supposedly cooperative and complementary arrangements are specifically indicated as vehicles for improving infrastructure and a range of country conditions (Economic Commission for Africa 2005). While not necessarily seen as the only solution for the economic and social challenges faced by governments, PPPs are widely used.

In spite of their acceptance by governments PPPs involve somewhat amorphous organizational arrangements (Hodge 2004; Weihe 2006). Weihe (2006) for example argues that there are now a range of debates about various forms of PPP. In part this relates to whether so-called PPPs are actually PPPs at all, meaning an equal cooperative arrangement between the partners, or privately financed initiatives (PFIs). PFIs might suggest a more hierarchical arrangement, with government as the principal in an agency-style relationship. However PPP is used here as a broad term in common usage which encompasses any of the public-private arrangements that surround many economic infrastructure development projects. This is consistent with the NSW government's own use of the term PPP (PPP Interviews 2006).

Nevertheless as this chapter will demonstrate the nature of the PPP arrangement is important. For example, it is important to consider whether the project contract covers both the technical-rational details and governance aspects, such as behavioral and mediation principles, especially in the case of disagreement or conflict if things go wrong. Weihe (2006) differentiates between the (hard) legal and the (soft) governance requirements of PPP arrangements, implying that the governance aspects are not included in the contract and are more implicit requirements involving partnership trust. This chapter suggests that implicit dependence on trust within such arrangements is not sufficient and that the social-relational aspects need to be specified as part of the legal contract. Thus governance of PPPs for the purpose of this chapter encompasses both the hard and soft elements. As Bovaird (Governance International 2003, cited in Bovaird, 2004b, p. 208) comments, governance can also be thought of as, 'the way in which stakeholders interact with each other in order to influence the outcome of public policies.'

The technical-rational aspect of PPP arrangements, especially the technical specifications and requirements of the infrastructure, including the allocation of risk, while still flawed to some extent is relatively well developed within PPPs. However the implicit relational conditions, especially how the partners should behave at all stages of the PPP, has been largely neglected to date. These aspects, which might be referred to as the social contract, are typically implicit aspects of the governance of PPPs and are not usually included within the legal contract.

Notwithstanding the general global support for PPPs, problems within such arrangements or outright failure are not uncommon and may lead to significant risks for taxpayers (Bloomfield 2006). In attempting to understand the reasons for such problems perusal of several supranational organizational reports (EU 2004; UN 2004; WB 2005) in relation to PPP failure suggests a superficial appreciation at best. This is especially so in

relation to the complexities surrounding PPPs, particularly those relating to the ethical leadership of such initiatives. The economic benefits and efficiency gains are usually the main focus of such documents with ethics largely ignored. Where issues of risk and probity are actually acknowledged it is mostly in a rational-technical context surrounding the way contracts are drawn up rather than how the project might play out and what might constrain partnership actions. PPPs in reality are potentially power-political, and organizationally and culturally, beyond the legal contract, are really nothing more than what Weick (2001, p. 380) might refer to as a 'loosely coupled' organization. As such there are unlikely to be common cultural norms that might mediate behaviors and lead to conflict resolution when things go wrong. PPPs, while bound up in legal contracts, are not encompassed by ethical concerns about their leadership per se.

As Clegg et al. (2005, p. 153) might argue about business propositions in general, PPPs have no underlying 'ethicality.' They suggest that: '[E]thics . . . is concerned with doing the right things in the right way.' While it might be assumed that the legal contract would define the issues of 'ethicality' of PPPs this has not generally been the case. Apparently underlying the rational-technical propositions contained within the legal contract is the assumption that all is well-founded and logical and is so rationally developed that problems will simply not exist.

Furthermore in cases where negative governmental, power political behaviors are observed in a way that may cause 'great controversy' (Parliament of NSW 2005) there are no apparent direct responsibilities for governments to show more ethical leadership. Beyond doing the right things in the right way 'ethicality' can also have a stronger meaning in the sense that there are strong moral principles 'in accordance with the rules or standards for right conduct or practice' (*Macquarie Dictionary* 1999, p. 727). Yet with PPPs these rules and right conduct standards in effect cover the soft dimensions of the arrangements and therefore are not specified as part of formal or legal governance agreements.

Where electability may be of concern to government, unethical or at least inappropriate leadership behavior may be the norm in a way that jeopardizes intended outcomes of PPPs (Hodge 2004). Therefore an initial interest of this chapter is a consideration of how supranational organizations could more realistically be focused on the pitfalls of PPPs and how more ethical leadership of such arrangements could be achieved. This is beyond a convenient and superficial grand rhetorical narrative that drastically simplifies considerable complexity and includes how better governance may be promoted. Outside of the technical-rational guidelines about good governance, ethical leadership within the context of the social contract or the so-called soft relational dynamics surrounding PPPs is of interest.

The role of supranational organizations is important as these are the high level organizations that have had a major and continuing role in promoting the market-based model of public governance, especially private involvement in a range of program and service delivery arrangements. Furthermore the idea of 'good governance' in a general sense has been the interest of supranational organizations for a number of years now. In this context, 'Governance can be broadly defined as the exercise of political, economic and administrative authority to manage a nation's affairs. Governance is thus about the importance of institutions [and] the interactions between . . . government . . . and business' (UN 2004, p. 3).

This definition can be interpreted more specifically to encompass PPPs, especially the interactions between government and business. As a search of various websites of supranational organizations such as the WB, the EU and the UN reveals there are numerous documents relating to PPPs and their governance. For the purpose of analysis one substantial report relating to PPPs from each of these organizations has been extracted (EU 2004; UN 2004; WB 2005). While the reports vary in length, substance and focus, the primary explicit or implicit aim of each of these reports is to address issues relating to the governance of PPPs. A major interest is to examine and discover whether or not ethical leadership in the development and execution of PPPs is a topic of focus or concern within these reports (Tables 15.1 and 15.2).

The starting point for analysis is to undertake a keyword search of the reports. These words are illustrative rather than exhaustive, but they could reasonably be associated with the idea of ethicality as it commonly surrounds the discourse of the market-based approach.

The keyword analysis provides a broad illustrative picture of the content of these reports but it is apparent from an explicit perspective that ethical leadership is not of specific concern. The primary focus not surprisingly is around the PPP legal contract. A secondary explicit interest of the reports relates to 'risk.' A tertiary interest is in 'transparency,' which could be seen to have an ethical element. Similarly related to 'transparency' is the use of 'principle(s)' in the EU report (and 'equality of treatment') mostly related to tendering and contract award processes but not to moderating behaviors as the contract plays out. While the UN (2004) report identified 'accountability' as important, the other two reports did not highlight 'accountability' as a field of significant interest within PPPs. A search of keywords which might relate to actual partnership arrangements and touch on the fundamental substance of these arrangements, such as 'collaboration,' 'cooperation' and 'mutuality' were mostly missing from the reports. The reports in general had limited interest in advancing ideas to address the social relationship created within the PPP.

Table 15.1 Incidence of specified keywords relating to PPPs

| Keywords | WB (2005) ^a report | EU (2004) ^b report | UN (2004) ^c report |
|----------------------------|---|---|--|
| Accountability | 1 | 0 | 15 |
| Collaboration | 2 | 0 | 2 |
| Contract (legal) | 136 | 196 | 72 |
| Cooperation | 5 | 5 | 8 (not within PPP) |
| Corruption | 20 | 0 | 22 |
| Ethical/ethics | 0 | 0 | 1 |
| Governance | 11 | 0 | 40 |
| Leadership/ stewardship | 0 | 0 | 1 |
| Monitoring | 21 | 1 | 4 |
| Moral | 3 (hazard) | 0 | 0 |
| Mutual | 8 (funds) | 3 | 2 |
| Principle(s) | 0 | 33 | 2 |
| Probity | 0 | 0 | 0 |
| Risk | 133 | 21 | 23 |
| Social (contract) | 7 (not related to the governance of PPPs) | 2 (not related to the governance of PPPs) | 25 (not related to the governance of PPPs) |
| Transparency | 32 | 15 | 12 |
| Trust | 37 (about trusts rather than trust) | 14 (entrust to a private partner only) | 1 (public) |

Notes: a: Major Focus on Mobilizing Private Finance in PPPs (90 pages);
b: Major Focus on PPPs, Community Law, Public Contracts and Concessions (34 pages);
c: Major Focus on PPP Governance and Infrastructure Development (22 pages).

Furthermore the only explicit reference to 'ethical' in these reports was in the UN (2004, p. 2) document which noted that the:

increase in governance issues is due to some concerns about the ethical behavior of both public and private actors operating in an increasingly global economy ... To date, however, the practitioners of ... PPPs in infrastructure have not given their specific attention to questions of governance.

Similarly in relation to 'leadership' there was only one explicit reference in the reports (none for 'stewardship'). This related to 'transparent leadership,' which if it occurred in government, it was suggested, could assist in reducing corruption within PPPs in some (developing) countries (UN 2004, p. 16).

In the absence of any multiple explicit references to ethics in the reports 'corruption' as an antithetical concept was also searched and was revealed as an often mentioned concern within the WB (2005) and the UN (2004) reports. The UN (2004) report for example noted that 'weak governance' of PPPs could be attributed to a lack of transparency and corruption. However, expressed concerns in relation to 'corruption' as noted above were usually in the context of the wider institutional, governmental settings in which PPPs take place rather than the governance of specific PPPs.

A more comprehensive scrutiny of these technical-rational style reports suggests that, beyond illustrative keyword analysis, the reports can be considered further within the context of a number of aspects relating to the governance of PPPs. Therefore on closer scrutiny it is apparent that the ethical dimensions of PPPs are of concern even if ethical dimension are not defined explicitly. As such many of the governance issues raised within the reports are important ones, including causes of conflict within the partnerships and proposals about dispute resolution. The UN report (2004) for example claims that conflict within PPPs is inevitable especially as the internal and external environments undergo change. Such a proposition suggests that the explicit ethical leadership by supranational organizations and governments of these PPPs needs to be of major concern. The stated role of the WB (2005) within its report is to intervene as necessary and to provide tools for the management of PPPs to developing economies. In the EU (2004) and UN (2004) reports their role and the role of government is proposed largely as developing institutional frameworks and systems and best practice tools and guidelines, but in a technical-rational sense.

Yet the explicit recognition of the likelihood of conflict within PPPs indicates that a much more forceful role for governmental and supranational entities could be based directly on ethical concerns. However governments' bad behavior within these arrangements, such as breach of contract, unilateralism and politicking is acknowledged but not from a social-relational perspective. Furthermore it is not an ethical solution as such that is proposed for addressing disputes within PPPs.

One proposal from the EU (2004, p. 18) report for instance, which basically concentrates on the contractual form of PPPs, proposes that the alternative 'project company' model may have merit through the creation of a 'joint entity' for the specific PPP with a 'legal personality.' However this places legality as a driving force at the apex of concern and the reports are silent on how ethical leadership might ensue beyond legally defined, technical-rational roles. Elements relating to the difficult issues bound up in human behavior, politics and power within PPPs are largely missing in spite of the recognition that conflict is inevitable. Moreover there is no suggestion that PPP dysfunction can be mediated through anything other

than legal procedures. In this vein these reports attempt to control for an ever-increasing range of variables through technical-rational redress. It is not meant to suggest here that the social contract necessarily should be given primacy, but that social, power and political issues relating to the governance of PPPs need to be considered along with explicit legal concerns.

PPP Governance Literature

It is not the intention here to canvass thoroughly the increasing literature on PPPs. However it is of note that some academic literature has been developing around the governance of PPPs. This literature still strongly concentrates on the technical-rational and legal elements of governance as contract. This especially relates to the known multitude of risk factors and how risk might be addressed within the legal contracts supporting PPPs. Hardcastle and Boothroyd (2003), Rwelamila et al. (2003), Akintoye et al. (1998, cited in Hardcastle and Boothroyd 2003) and Hodge (2004), for example, identify a large number of PPP risk factors, which can be apparent at any stage, through design, construction and implementation.

It is suggested that if risk factors are not well covered within contracts, then the breakdown of governance of PPPs is likely to occur. Therefore it is imperative that risk is well considered in advance. To this end Hardcastle and Boothroyd (2003) suggest that contract development needs to include potential risk factors, their likely impact and how the factors should be addressed if a risk is realized. Risk in their interpretation basically relates to factors that can cause delay or cost increases within the PPP. Hodge (2004, p. 39) notes that the issue of risk transfer to the private partner is the key to value-for-money outcomes and efficiency gains achieved by PPPs compared to other forms of more traditional government procurement.

However while the allocation and consideration of risk is largely promoted as a technical-rational exercise in much of the literature, Edwards and Bowen (2003) suggest the possibility that risk perception and identification of risk within PPPs is actually a social construction. This leaves open the possibility that there will be misperceptions and misidentifications of risk within PPPs and between the partners that can lead to breakdowns within both the technical-rational and social systems surrounding the arrangement. This is likely to occur, as Hodge (2004) contends, if the risk sharing, risk shifting processes that separate PPPs from other infrastructure development initiatives do not result in commensurate rewards for the partners involved.

Nevertheless, even if there are difficulties within the PPP government has a major governance role and responsibility, mainly because its primary concern is protecting the public interest. Governments need to behave

accordingly. This means that the 'political rhetoric' (Hodge 2004, p. 41) surrounding PPPs needs to be differentiated from the substance of the legal contract and actual partner experiences. However Hodge also observes that legal disputes within the complex network of relationships involved within PPPs seem to be an inevitable consequence of this kind of arrangement.

Brinkerhoff (2002) also notes in terms of the social contract surrounding partnership arrangements that when there is no real shared understanding or partners hold to traditional roles, conflict is likely. In these instances some form of social mediation might be required beyond the legal contract. Yet social mediation might not be enough. Hodge (2004), using an Australian case study of a toll road in the State of Victoria, acknowledges the impact of power and politics within PPP governance arrangements and the ways in which relationships can break down. To this end governments as the effective contract holders may have disproportionate power and influence within the PPP and will use political behavior to achieve their ends. Thus Hodge (2004, p. 46) contends that for governments the inter-penetration of politics into the governance of PPPs 'is not so much a case of risk shifting or risk sharing . . . but one of shirking stewardship responsibilities in governance.'

Thus in terms of the governance of PPPs it is apparent that the predetermined legal contract even as a negotiated technical-rational complex control system for the PPP cannot necessarily account for failure of the contract to include unforeseen difficulties, especially negative partnership behaviors that might violate the negotiated arrangements. If PPPs therefore are prone to systems failure within the technical-rational system then an effective social system as a mediating force seems even more important than just the continuing resort to legal redress. However it is equally apparent that an implicit social contract may well be ineffective as a form of PPP governance control.

Some of these issues outlined in the literature are clearly demonstrated in a large infrastructure PPP that occurred in Sydney, Australia's main trading city and with a population now of over four million people, in the State of New South Wales. This was a PPP that went dramatically wrong in the implementation phase.

THE CASE OF THE CROSS-CITY TUNNEL (CCT): THE 'GREAT CONTROVERSY'

The NSW sub-national government in Australia has been a keen adopter of PPPs over a number of years. Around 10 to 15 per cent of government procurement now occurs within a PPP framework, with recent expenditure amounting to billions of dollars. For example over a 10-year period up until

late 2005 A\$3.3 billion had gone into the development of private tollways through PPP arrangements. Nevertheless the merits of infrastructure PPPs have been the subject of continuing public debate, not least because of the failure of some private companies to survive, particularly as a result of realized patronage risk (Barratt 2003; Premier's Department 2005; PPP Interviews 2006).

A highly controversial recent economic infrastructure PPP in Sydney involved the design, construction, operation and ownership transfer (after 30 years) of a cross-city tunnel (CCT) tollway. The government initiated the project that it indicated was wholly in the public interest and was designed to divert through-traffic away from the city. In reality while government referred to this project generically as a PPP it could more correctly be categorized as a PFI, as financial risk was transferred virtually entirely to the private partner. Government in this case adopted a no-cost-to-government policy approach. (The details of this case were drawn from the following sources: Legislative Assembly 2006; Premier's Department 2005; Harris Interview 2006; Parliament of NSW 2006; Ritchie Interview 2006; Greiner Interview 2007).

Capital raised for the project by the successful private sector equity partners was A\$343.5 million and by the financial backers was A\$502.5 million. The investment capital, the highest offered in the tendering and contract award process, included an up-front payment to the government of approximately A\$97 million which was to cover unbudgeted additional costs (56 percent of the A\$97 million) and a right-to-operate fee (46 percent of the A\$97 million). While this PPP obviously involved great complexity, only a summary of critical aspects is included here.

The exact structure of the PPP organization was not clear in terms of the principal partners because of changes over time and companies and trusts created especially for the project. Nevertheless for the public partners there appear to have been one government minister and five public sector organizations primarily involved. For the private partners there was a consortium of three national and international companies (including a large German construction company and Deutsche Bank). Two of these private partners appear to have formed a joint venture company and a number of project-related companies, including an operating company (called the 'Company' for the purpose of the case study). Initially there were at least six private financial backers including financial institutions and superannuation funds in Australia covering public servants. A refinancing arrangement for the project in 2003, two years before the tollway opened, appears to have involved around 17 national and international banking institutions.

The tunnel opened in August 2005 operated by the Company. The implementation phase was one of intense vulnerability to both the sub-national

government and the Company but for entirely different reasons. For the government the 'great controversy' surrounding the opening, once residents in the area realized that alternative surface roads into the city had virtually been cut off, created political risk for the government 18 months before an election was due. While the plans to close these roads had been on the public agenda for some years, the full impact was clearly not felt until the tunnel opened and motorists discovered the consequences of road closures for themselves. For the Company this considerable level of resident anger created patronage risk as motorists chose not to use the tollway. This was because of a high toll for a short distance and residual frustration over the local road closures (ostensibly for traffic calming but seen by the public as tunnel funnelling).

The Company had set the toll at a commercial return on investment estimation over 30 years based on their costs to date including the right-to-operate fee, up-front payments and additional costs. Patronage was also estimated to be around 90 000 vehicles a day but in the event barely rose above about a third of that amount. A subsequent decision to introduce a toll free period to try to increase patronage and a later reduction in the toll failed to address the immediate concerns. It was apparent that aspects of the legal contract as the basis of the technical-rational governance system were already creating problems for both the government and the Company. Furthermore the social relationship was breaking down in an undignified public way.

The many issues of contention for each of the primary partnership groups was fought out in the public domain between the government and the Company, which only exacerbated a continuing deterioration of partner relations. In effect there was a complete breakdown of the social contract especially as the government used a colorful and pejorative blaming rhetoric to criticize the Company. As Greiner (Interview 2007) describes the situation 'political unhappiness' resulted in the tunnel being 'orphaned' by the government then 'demonized.' In spite of the fact that this PPP was completely the government's initiative they took no moral ownership of the project during this period and simply blamed the Company for all the problems. For many months both the Company and the government attempted to resolve the issues in their own individualistic ways in an atmosphere of public disenchantment and continuing media interest (Four Corners 2006).

During this period too both the chief executive officers (CEOs) of the primary government organization responsible for the project and the Company were dismissed or resigned. Even with a new CEO of the Company, not surprisingly, there was a further breakdown in the PPP contractual and social relationships. As subsequent reports into the early stages of implementation indicated, the tunnel, as a PPP, caused

'great controversy.' The complete breakdown in the implicit social contract between the partners largely contributed to the lack of resolution. Government also seemingly breached the legal contract by unilaterally reversing most of the road closures, or funnelling initiatives, which further exacerbated the cash flow problems for the Company due to continuing patronage risk. The Company kept indicating that they had just honored the requirements of the legal contract established by the government.

Eighteen months after the tollway opened in December 2006 the Company was placed in the hands of an administrator. While many confidential commercial matters surround this project, as far as is known the dispute between the partners remains unresolved and is the subject of legal proceedings with at least A\$100 million dollars at stake (AAP 2006; Baker 2007). Other litigation is supposedly pending designed to retrieve some of the capital for the financial backers. It is also likely that there will be taxpayers' costs and even possibly sovereign risk if the subsequent private operator experiences similar patronage problems.

This situation continues to play out in a climate where the large infrastructure development market reputedly is becoming less attractive to private sector investors in NSW. While Standard and Poor's, for example, praised the government for not taking over the financial risk when the tollway failed they have also noted that investor risk in NSW has probably increased with the government's failure to honor aspects of the contract (ABC News Online 2007; Reuters 2007; Scott 2007). This is within the context of the PPP legal contract because of the government's unilateral decision to reverse the surface road closures. The assessment by Standard and Poor's is probably correct in the second instance but their praise of government in this case does not seem warranted, given the government's behavior over time and the fact that its actions apparently jeopardized the financial viability of the Company.

This case particularly highlights the need for ethical leadership of such PPPs, especially in a way that avoids what can only be described as the undignified public breakdown of legal arrangements and social relations within the PPP. For the partners this included the absence of any evidence that any or all of them had applied any kind of management and leadership that could be related to ethicality. Instead of the PPP involving a collaborative-cooperative arrangement or relationship the so-called partnership became increasingly antagonistic.

Reflecting on Failure

As a result of the public debacle surrounding the cross-city tunnel numerous reports were commissioned by government or undertaken by parliamentary

Table 15.2 Keyword analysis of PPP reports NSW

| Keyword | The Premier's Dept. (2005) (64 pp.) | Parliament of NSW (2005) (248 pp.) | Audit Office of NSW (2006) (93 pp.) | Legislative Assembly (2006) (143 pp.) |
|----------------------------|---|--|---|---|
| Accountability | 7 | 19 | 3 (in general) | 31 |
| Collaboration | 0 | 0 | 1 | 0 |
| Contract (legal) | 183 | 319 | 77 | 292 |
| Cooperation | 0 | 1 | 1 | 5 |
| Corruption | 0 | 4 (ICAC) | 0 | 0 |
| Ethical/Ethics | 0 | 0 | 0 | 0 |
| Governance | 1 | 0 | 0 | 23 |
| Leadership/ Stewardship | 11 | 1 | 0 | 5 |
| Monitoring | 3 | 3 | 4 | 38 |
| Moral | 0 | 0 | 0 | 0 |
| Mutual | 0 | 0 | 0 | 2 |
| Principle(s) | 1 | 12 | 13 | 37 |
| Probity | 6 | 5 | 5 | 1 |
| Risk | 66 | 65 | 29 | 296 |
| Social (not contract) | 5 | 3 | 1 | 59 |
| Transparency | 5 | 9 | 2 | 12 |
| Trust (not in PPP) | 2 | 3 | 1 | 21 |

Note: ICAC = Independent Commission Against Corruption.

committees or government watchdog agencies in relation to PPPs in NSW generally and to this PPP in particular (Legislative Assembly 2006; Premier's Department 2005; Audit Office of NSW 2006; Parliament of NSW 2006). All touched on issues relating to the CCT PPP. This scrutiny occurred mostly because of the 'great controversy' that marked the operational phase of the CCT PPP. All these formal reports recognized various aspects of PPP failure and made recommendations to improve governance.

When using the same keyword analysis as for the three supranational reports (Table 15.1) it is apparent that issues surrounding ethical leadership remain largely neglected in these reports, too (Table 15.2).

It is not the intention here to visit all the keywords in detailed analysis but rather to note that the major areas of interest remain the legal contract and risk assessment, similarly to the supranational organizations' reports (Table 15.1). A closer examination of these NSW reports further indicates

that virtually all the recommendations concentrate on improvements to the technical-rational system by making additions to the legal contract. This approach simply adds to system complexity and increases the number of variables that the technical-rational legal system is meant to control in terms of risk. While the Legislative Assembly (Public Accounts Committee 2006) report does recognize the importance of governance systems within PPPs, again this is in a technical-rational context.

Aspects of the social contract or the actual behavioral relationships are not an interest of the reports at all, not even in a technical-rational sense. Yet in this particular case it was evident that the social relationship, if it ever existed in a positive way, collapsed at its first real test at the beginning of the implementation phase. Aspects of collaboration, cooperation or mutuality surrounding such arrangements are clearly not seen by any of the committees behind the reports as sufficiently important for redressing PPP failure. Yet in this case it was obvious that there was a major breakdown of the social relationship between the partners. Either the committees have proceeded and reported on the basis of ignorance or have deliberately chosen to avoid such a contentious political area as the failure of the social aspects of partnership. Whatever the situation, this case suggests that there are a number of formal additions that can be made to the governance of PPPs.

DEVELOPING A MODEL OF PPP GOVERNANCE AND ETHICAL LEADERSHIP

The overall evidence from the research into PPPs, including this case, strongly indicates that there is a major deficit in the way PPPs are developed and mediated over time from a governance perspective. Undoubtedly the technical-rational system surrounding the legal contract is important, but it is equally evident that the greater the complexity and the number of variables that this system attempts to control for, the greater the vulnerability of the technical-rational system overall. This indicates that more attention needs to be paid to the social contract within PPPs and how both the hard (technical-rational contract) and the soft (social contract) elements of PPPs can be brought together within a broader and hopefully, more meaningful, governance system. This means though that for the execution of PPPs governments will need to agree to give up the opportunity for gross political behaviors at the first sign of trouble and behave as ethical leaders exhibiting moral responsibility and ownership of the project with their partners. This is obviously a big request but one that is necessary in this different, hybrid organizational form.

If government cannot achieve what it wants to do in terms of economic infrastructure development in the public interest by acting alone, and it chooses to act in concert within a private partnership, then there are moral expectations about behavior if the public interest test is applied (Greiner Interview 2007). Ethicality as a primary principle needs to underpin such arrangements. As Bovaird (2004b, p. 207) suggests, when public sector organizations are not in a position to act on their own to implement public policy then a partnership arrangement that aims to result in a collaborative benefit may be the key. Another simple principle is that mutual responsibility of the partners to achieve the aims of the project needs to be paramount. Broad areas of risk to such achievement involve both the technical-rational and social systems. How both these systems can then be governed for the purpose of the PPP needs to be constructed with formal legal and behavioral requirements.

While at one level it may not be wise to propose complicating the technical-rational system further, behavioral and governance principles and rules beyond the legal contract certainly need to be explicit and probably formalized. This is because there is now sufficient empirical evidence to suggest that the implicit social contract does not act as a mediating force. On the one hand governments would probably resist such an approach to diminish the likelihood of inappropriate political behavior during the period of the contract. On the other hand the private partners may well welcome such an approach. Furthermore when global watchdog agencies such as Standard and Poor's warn incumbent governments that the breakdown in the social contract within a PPP or PFI (however defined) may jeopardize their international financial rating it would be expected that they might take note. Dignified public behavior of governments that diminishes taxpayer and sovereign risk is after all in the public interest and can be promoted by governments as a powerful rhetoric.

Four explicit approaches to an integrated governance system for PPPs are possible and are suggested here (Bovaird 2004b; Hofmeister and Borchert 2004; Haque 2004; Sadran 2004; Sedjari 2004; Greiner Interview 2007). Not one was exercised in the CCT case, but had they been, the situation that arose may not have been so unethical and devoid of responsible leadership. In fact there would have been specific mechanisms for mediating the conflict. First, a specific-purpose, formal organization could be initiated by the partners relating to the creation of a PPP with legally defined governance structures, roles and responsibilities. Second, the PPP could be a self-governing organization, as defined within the legal project and social contract, but the contract would have explicit governance responsibilities and roles defined. Third, government could create a central government PPP governance unit responsible for facilitating good governance practice

within PPPs. This could be a general purpose entity or a specific entity for each major infrastructure development. Greiner (Interview 2007) for example when reflecting upon the failure of the CCT suggests a turnpike management model as is evident in the United States of America for road infrastructure PPPs. Fourth, the government could create an independent watchdog unit responsible for governance issues within PPPs and within the context of a set of defined procedures for behavior. In the case of breakdown in the social contract there would be mandatory processes for resolving and mediating partnership disputes before resorting to legal redress. These four approaches are not necessarily mutually exclusive and in fact could be mutually reinforcing and are relatively straightforward. While the legal aspects of partnership would be covered and developed as normal, the social aspects of partnership would be explicit in all these models, with ethical leadership related to a public interest test as the primary concern.

Obviously all these approaches, with explicit social contractual requirements, would limit the opportunity for government politics penetrating the PPP environment. However it is argued that the hybrid organizational arrangement of PPPs now requires different – and ethical – behaviors for governments from those traditionally accepted as part of the political environment. Where millions or even billions of dollars (or euros) are at stake, this does not seem to be an unreasonable proposal.

CONCLUSION

This chapter has explored numerous issues relating to governance and the explicit technical-rational, legal systems surrounding PPPs as well as the usually implicit social contract that presupposes that ethical behaviors and leadership will be apparent and sustained within the terms of the long-term contract. Examination of supranational organizations' responses to PPPs and their governance reveals virtually no concentration on ethical leadership, either within the technical-rational or social systems. Similarly reports that consider problems within PPPs at a sub-national level in Australia fail to acknowledge the importance of ethical leadership. The chapter has thus proposed that a formal governance system requiring ethical leadership of PPPs be defined and included for large infrastructure PPPs, especially to cover issues of trust and mutual responsibility that are part of the social contract. Such a framework should act as a safeguard against the kind of behaviors that led to the 'great controversy' in Sydney. Nevertheless it is also recognized that the nature of politics will probably mean that governments may resist an approach to ethical leadership of PPPs in favor of the freedom to be political. It is hoped, however, that some governments and

the supranational organizations might promote ethical leadership in PPPs as of far stronger political advantage than governments continuing to be unprincipled and unilateral in their approach to such important contractual arrangements.

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