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Public-Private Partnerships: When Ethics and Policy Making are an Afterthought

Les partenariats public-privé : l'éthique et la formulation des politiques publiques en considérations secondaires

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Article abstract

The interest of governments in public-private partnerships (P3s) has increased in the last decade. In Canada, this fervor is no exception; decision makers recognize an ideal tool of governance, in the logic of the "new public management." While academic literature has focused on the actual benefits or problems associated with this form of service delivery - namely cost calculations, risk sharing, contract duration and efficiency - little attention has been paid to the ethical character of this policy instrument. As far as public management in general is concerned, ethics is generally an afterthought (Ghere, 1996). Where P3s are concerned, this quote is even more relevant. Given the efficiency mantra at the heart of P3s as a new policy instrument, it is no wonder that questions of values and public interest come second to promised or expected financial savings sought by political leaders. In order to tackle the role of ethics in public-private partnerships, this article takes a policy formulation stance and stresses the conflicts of values at the heart of this political choice and the challenges it involves for public interest and policy making in the long run.

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Nathalie Burlone

Introduction

Governance, a buzzword, means everything from the role of boards of directors to international "good" practices and democratic participation. It refers as well to a network of organizations (public, private, civic, mixed) that live in complex environments in which their rapid adaptation to change require that they innovate, learn to collaborate, and become "learning organizations" (Paquet, 2004). Caught in the same paradigm, public organizations gradually established important relationships with partners outside government in order to improve service delivery. As such then, governance refers to the partnerships themselves and to the environment in which participants will interact, be they members of civil society, the private sector or state representatives (Mishra, 2003). It also includes public sector functioning and capacity, as well as rules and institutions created to provide a framework of action to public, private and non-profit sectors management. It supposes new forms of service delivery, some that imply substantial power sharing, by which public-private partnerships (P3s) are usually understood and legitimized. Indeed, focusing on the importance of relationships puts ethics in a different context and adds to the complexity of understanding ethical issues in government. In that sense, P3s raise interesting ethical challenges: how is ethics incorporated (or forgotten) in governmental decisions of "letting go" of certain services over a long period and what are the consequences of this direction in terms of policy making as a process? These are not trivial questions as Hodge (2004) outlines: "They [P3s] typically involve complex contractual arrangements and they also assume different governance and accountability arrangements" (Hodge, 2004, p. 46). Moreover, P3s raise potential conflicts between values such as public interest, efficiency and accountability, to name only the obvious ones.

Stepping aside from the actual benefits or problems usually reported in the academic literature around P3s (such as cost calculations, risk sharing, contract duration and efficiency), this article will focus on the ethical nature of this policy instrument. Specifically, in order to tackle the role of ethics in public-private partnerships, this article moves away from the common ethical concerns relative to the standards developed to justified the creation of public-private partnerships, the sharing of competences and the responsibilities between partners. Rather, it takes a policy formulation stance and stresses the conflict of values at the heart of this political choice, the challenges it involves for public interest and policy making in the long run.

As they are for public management in general, ethical preoccupations relative to public-private partnership implementation are generally an afterthought (Ghere, 1996). Given the efficiency mantra at the heart of public-private partnerships as a new policy instrument, this is no surprise. Questions of values and public interest come second to promised or expected financial savings sought by political leaders. Indeed, the adoption of public-private partnerships as a policy instrument, or, at least, the justification developed in its defense, is rooted in the classical rational decision making model, clear of any political and democratic considerations. Unfortunately, rational decision making about policy instruments does not quite answer ethical and long term policy making challenges.

Public-private partnerships ethics and values

Public-private partnerships have interested governments for the last two decades, decision makers seeing them as an ideal tool for reducing public sector budgets, lowering costs of services, reducing financial risk, avoiding capital costs and, diminishing political costs of imposing user fees (Vining et. al., 2005). Public-private partnerships are therefore being developed in numerous countries – the United Kingdom leading the field – notwithstanding the fact that they have been criticized from both a political and a market perspective (Bovaird, 2004). Public-private partnerships are also seen as a good governance tool to answer citizens' dissatisfaction and declining trust in government:

"Ironically, in response to this legitimation crisis and to charges that government – especially the federal government – is inefficient and wasteful, recent years have witnessed a turn toward making government functions and services more business-like, further strengthening the connections between business and government and the disconnection between government and its citizens" (King and Stivers, 1998, p. 24).

In Canada, with only 27 percent of citizens expressing their trust in government in 2002, compared to 75 percent in 1960 (Heintzman and Marson, 2005), the appeal of the private sector was no exception. Indeed, since the beginning of the 1990's, several experiences of public-private partnerships were put forward such as the Confederation Bridge between Prince Edward Island and New Brunswick, and the Highway 407 in Ontario, as well as other ventures related to schools, water treatment and property management (De Bettignies and Ross, 2004).[1]

Although definitions of public-private partnerships are multiple, they are best understood on a continuum culminating at complete privatization of service delivery. This is how the Canadian Council for Public-Private Partnerships (CCPPP) presents public-private partnerships, referring to different processes or stages of service delivery, be they linked to funding, maintenance, short term contracting, or complete privatization of services:

"A cooperative venture between the public and private sectors, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards. (…) Public-private partnerships span a spectrum of models that progressively engage the expertise or capital of the private sector. (…)The options available for delivery of public services range from direct provision by a ministry or government department to outright privatization, where the government transfers all responsibilities, risks and rewards for service delivery to the private sector. Within this spectrum, public-private partnerships can be categorized based on the extent of public and private sector involvement and the degree of risk allocation."[2]

Whether one agrees with that continuum is not unimportant. Power sharing in the form of consulting services or subcontracting solely for maintenance purposes is quite different from long term contracting, implying service development and delivery. Although ethics issues could be put forward for all the different instances on the continuum presented by CCPPP, this paper will focus on public-private partnerships understood as an intentional long-term business contract with the private sector for otherwise delivered public services: "(…) government has a business relationship, it is long term, with risks and returns being shared, and that private business becomes involved in financing, designing, construction, owning or operating public facilities or services" (Hodge, 2004, p. 37). Linked to management practices and governance models, the rapport between values and policy development is relevant. Values and, by extension, ethics (or lack of) have to be understood in relation to the duration of partnership agreements with the private sector, and to the divestment of authority they represent. The growing attraction for such new forms of governance comes with a decision to adhere and propose some values as cardinal, and to put others aside. Moreover, it comes with the assumption that those privileged values will be accepted by the electorate, and by civil servants for that matter, or best, reflective of what is really demanded democratically. This is not a light challenge, for some values too often refer to everything and its opposite, and are vague enough to be all-inclusive. Nonetheless, since the Canadian government has explicitly put an emphasis on values and ethics in the last years,[3] they remain an interesting starting point in order to understand where decision makers stand ethically when they opt for public-private partnerships.

Ethics goes beyond management, structures, or individual behaviors. It is a central variable of public decisions, be they actions or inactions. Ethics is important in terms of long term choices of governments, and the effects of those choices in a variety of sectors of activity. Indeed, for the private sector, horizontal management generally refers to the need to organize different units coherently for efficiency purposes. For the public sector, although efficiency remains an objective, making sure that the overall structure is coherent is not enough. Special attention needs to be paid to harmonizing policy development and policy implementation across jurisdictions as a way to ensure the relevance and the effectiveness of governmental action. Ethics also means that decisions are dependent on a number of factors, internal and external, which may have different effects at different times. Ethics and values are obviously linked since values are at the heart of moral choices. Therefore, understanding the role of values in decision-making processes should help clarify ethical issues public administrators and elected officials deal with (Gortner, 2000). Theoretically, this is an attractive logic. Practically, it is not that simple. In order to understand ethical issues embedded in public decision making, some sort of agreement on what a value is has to be reached, as well as an understanding of where these values come from. This leads to the question of how public administrators and elected officials understand and use values in their day-to-day activities. As Gortner (2000) put it, public administrators live in a world of facts and values. Facts provide a rational base, whereas values cause individuals and groups to disagree on what values are important. Values color perceptions of facts, of judgments, and, as well, solutions.

Whether public servants and elected officials share the same values as society in general is not an issue per se. After all, they are part of society and their job, at least on paper, is to best serve the public. Moreover, a few values are de facto considered common, such as freedom, equality and honesty. These values are taken for granted and put forward as the ultimate argument in favor of status quo or radical change. However, what blurs the picture is the assertion that public administrators share similar values with citizens. This assertion is generally made out of context, without the reality check that comes with the complex issues civil servants and elected officials have to face. Given that values are not permanent, that they change over time and are often in conflict with one another, they will affect perceptions, interpretations and actions – all behaviors that are particularly important when it comes to policy development.

Decisions are therefore colored by context, interpretation, dominance of certain values and, inside or outside pressures exerted on values. As stated in Dwivedi and Gow (1999), ethics is rooted in conflict because interests and preferences lead to divergent values and may cause friction. When outsiders, such as private partners, are entering the public domain, they do so with a set of preoccupations, preferences, priorities, and values that are substantially different from those of the public sector official. As Stone (2002) thoughtfully noted:

"It would be as much a mistake to think that the market has no concept of the public interest as to believe that the polis has no room for self-interest. But there is a world of difference between public interest in a market and in a polis. In theory, the public interest or general welfare in a market society is the net result of all individuals pursuing their self-interest. In economic theory, given a well-functioning market and a fair initial income distribution, whatever happens is by definition the best result for society as a whole. In a market, in short, the empty box of public interest is filled as an afterthought with the side effects of other activities. In the polis, by contrast, people fill the box intentionally, with forethought, planning, and conscious effort" (Stone, 2002, p.22).

In such a power-sharing context, elected officials have to take into account that new environment, and solutions adopted could then be far from what the public considers to be in its interest. Ethical issues, therefore, take the form of conflict over the public interest because of the choice of values this kind of partnership entails. When public interest is at stake, it is worth questioning what values are privileged and what ethical issues may be raised. When public actors share a big chunk of power, two different cultures are at work, with values that are not necessarily similar. Indeed stakeholders have different expectations depending on whether they are viewed as public sector or private sector. While public servants and political leaders have a certain obligation to work towards the public interest, private partners have no such liability. Out of the public sector realm, what guarantees (and power) do citizens have that the values implemented are the ones they voted for? As Kettl summarizes "The basic model underlying the competition prescription itself suggests that agents (contractors) will have many goals besides those of the principal (government) and that principals will have difficulty detecting which missions their agents are carrying out" (Kettl, 1993, p. 201).

Of course, we are left with the ultimate question of who should define the public interest. Elsewhere, I have argued that public interest, as opposed to the common good, is dependent on circumstances and temporality, especially when it comes to policymaking.[4] The ethical character of decisions must be appreciated within a longer time interval than the one that governs decision making and the duration of public policies. What seems ethical today may not necessarily be so tomorrow. Standards and values evolve with time and leave room for political and social choices that would have been unimaginable at another time. On the other hand, it does not mean that anything goes and that policy making should be undertaken on a trial-and-error basis. For public interest is also about the kind of society citizens want for themselves in the short and long term.

In that logic, public-private partnerships, understood as a long-term business contract, is the type of partnership that most challenges policy making in the long run. Indeed, behind that business contract lies a governmental obsession with performance and an open desire from private partners to make money (Cohn, 2004). This shared anxiety has the potential to lead to a different concept of the public interest and, therefore, to situations far from what is expected from a taxpayer point of view. In that manner, public-private partnerships are not only interesting as a fetish[5] as Cohn (2004) put forward, but also as a particular set of values that is presented as the public interest only sensible choice. To use the wording of the Canadian Values and Ethics Code for the Public Service published in 2003, among those values, efficiency, economy and initiative lead the way. This set of values, however, does not address the strong impacts that large-scale implementations of public-private partnerships may have, such as creating a democratic deficit and an impoverishment of governance (Rouillard, 2006), not to mention the rupture in the policy cycle it inevitably creates. This rupture leads us to question how democratic values are operationalized, given the disconnection between broad governmental intentions (in line with the public interest) and short term actions undertaken.

Public-private partnerships and policy making

Values usually linked to public policy could be separated into two sets (Dwivedi and Gow, 1999): instrumental and substantive values. Instrumental values are linked to how actions will be executed and who will take charge. They refer to efficiency (minimum cost), effectiveness (achieving its goal), legitimacy, whereas substantive values tend to focus on what government will do and are associated with acceptability (in political terms), authenticity (choice among competing demands) and justice. Values behind public-private partnerships are essentially variations of efficiency values. The fact that governments seek to become more effective and efficient may be commendable, but one can question the adverse effects such a policy instrument can have on the policy cycle and, by extension, on the public interest. As outlined by a number of authors, the first effect may well be on accountability, since power-sharing comes with a dilution of authority over management supervision, coordination and decision making. As Sadran (2004) noted, the structure of the partnership and mechanisms of control put forward may be compromised for cost efficiency, leading to bad governance. On the subject of accountability, Hood (1991) argues that the various components of public administration cannot all rest only on the value of efficiency. Other values such as honesty, equity and flexibility must also be considered. On the other hand, the question of the ministerial responsibility must also be tackled. Public-private partnerships imply a reduced state in which a producer-consumer relationship is established with the citizens. This new dynamic raises the question of the real transformation of a political relationship towards a market-type relationship. The use of public-private partnerships may improve governmental capacity but may simultaneously erode political and ministerial responsibility. Since implementation is no longer carried out by public officers but by private partners, this reduces the real power and decision authority of ministers. A number of authors consider that separation between policies and operation makes it possible for ministers to be strategic in their decision making – allocating more time to goal setting tools and performance measurements to assess the efficiency of the governmental operations (Aucoin, 1995). This assumption does not address the potential effect of attrition of political control over public administration. Therefore importing private policy tools into the public sector where the goals are different may not be as effective as it is appealing.

As pointed out by Teicher et. al. (2006), public-private partnerships are an extension of the agency model popularized by Osborne and Gaebler (1992) in their famous book on “new public management.” Indeed, similar issues raised concerning the impact of the agency model on policy development are only more acute when it comes to the ethics of public-private partnerships. Ethical considerations are important at various stages of the policy making process, particularly at the formulation stage, when solutions are developed. This is especially significant for certain policy sectors, namely health, technology and environment, where failures to solve problems or unpredicted side effects may have severe consequences. Ethics add another variable for policy making: what outcomes should be expected from decision makers and what values should these outcomes be based on? Any assessment of potential side effects of public-private partnerships should include a inquiry about the implementation of governmental intentions and its evaluation. In that sense, effectiveness and efficiency may not be the only important outcomes. To date, assessment of potential side effects of public-private partnerships are only measured in terms of risk sharing at an early stage of the cycle (Hodge, 2004) and relative cost as a policy instrument (Bovaird, 2004). Given that the notion of risk is different for each individual, social groups or social context, risk evaluation is a highly subjective exercise. Moreover, these forms of assessment do not take any other values than efficiency into account. Accordingly, the public sphere needs not to be forgotten as an important variable of decision making.

Certainly the most significant effect of public-private partnerships in terms of policymaking relates to its impact on policies in general. The long term contracts inherent in public-private partnerships contradict the process of policy making and, paradoxically, ignore a long-term reflection on policy formulation. From the end of 1970s until the beginning of the 1990s, public policy implementation became the focus attention. The failure of certain programs and policies highlighted the gap between policy formulation and its implementation and, consequently, induced an examination of the factors contributing to success (Pressman and Wildavsky, 1973; Van Meter and Van Horn, 1975; Sabatier and Mazmanian, 1980; Barrett and Fudge, 1981; Goggin et. al., 1990; Sabatier and Mazmanian, 1993). Arguing for a top-down, a bottom-up or a two-way approach to policy implementation, all of these authors had the common goal of stressing the central place policy and program implementation occupied, and its necessary interrelationship with the formulation phase. All of these authors view the policy cycle as iterative, meaning that problem identification, formulation of solutions, adoption, implementation and evaluation phases constitute an interactive process, divided into stages only for analytical and explanatory ends. In this process, implementation is the crucial phase that allows the circular motion of the cycle. The fundamental position that implementation occupies in this cycle seems nevertheless ignored by the precepts associated with public-private partnerships, namely because of the division between formulation and implementation that P3s impose on public policies. This neglected dimension leads inevitably to a critical analysis of their application. Relating to the “new public management” argument that such a separation is one of the great benefits (Stewart, 1996; Walsh, 1995), one can wonder if, in the long run, this division will have a negative impact on policy coherence and public values put forward. Public-private partnerships do not take into account the necessary feedback of implementation successes or failures on policy development. Policies are adapted and transformed through implementation, and this has a direct influence on the reformulation of policies or the formulation of new ideas in programs. Success or failure of the implementation phase emphasizes where solutions are most adapted to the problems they are trying to solve and, how they have to be improved. Since public-private partnerships, once put in place, do not leave room for participation of the public and for an assessment of their satisfaction, the retroactive process cannot be guaranteed, therefore jeopardizing subsequent policy formulation or changes in existing programs. As Paquet (1997) underlines, policymaking is not only a relation between ends and means but rather:

> “(…) La formulation des politiques, la conception des programmes et la prestation alternative de services sont étroitement liés : il faut établir une ‘boucle de rétroaction’ pour s’assurer que les questions d’administration, de politique et d’exercice fondamental de l’autorité sur lesquelles elles reposent font partie d’un seul et même processus d’apprentissage social ” (Paquet, 1997, p. 53).

Another issue has to do with the real efficiency gain predicted by the adoption of public-private partnerships understood as a tool that is disconnected from policy development. At the heart of public-private partnerships lies the market model that may well have a positive impact on service delivery as a process. But the real question lies in the quality of services, as a public good, especially in the long term. Are public-private partnerships essential to the improvement of the quality of services? Recent national and international examples tend to show the opposite.[6] While a separation between policy development and policy implementation could be argued on the basis that current policies are not elaborated in order to be implemented by a variety of structural arrangements and are, therefore, ineffective (Wright and Zussman, 1996), it is necessary to explore the potential accentuation of their inefficacy through actual separation of the two phases. This becomes more important from an inter-organizational perspective. Policy implementation does not pose a problem so much in terms of its execution but in terms of coordination and cooperation to carry it through. Indeed success or failure of a policy implemented as a governmental program will depend on the type of interdependences developed. Public-private partnership contracts do not take into account inter-organizational requirements of public management. Therefore, it may well be, that putting only one party in charge of service delivery will accentuate existing problems of coordination and require other solutions to guarantee a certain harmonization of public policies and programs.

It is also imperative to address the overall articulation of the policy cycle, particularly with respect to policy evaluation. It is far from clear as to where policy evaluation fits in the public-private partnership model. Insofar as evaluation must become an integral part of the decision-making process, organizational structures must be adjusted consequently and not the reverse. Therefore, public-private partnerships are a rigid proposal for an effective use of program evaluation. Are departments to be completely put out of the evaluation business? Policy evaluation is not a tool of control, nor is it a mechanism to simply improve existing programs or to reduce the size of the state. By belonging to the decision-making process, the value of policy evaluation lies in its power to generate positive change, starting with implementation outcomes and ending at policy (re)development. Obviously, when contemplating a tool such as public-private partnerships, it is necessary to take into account the nature of the services and conditions for their implementation. Whereas policies evolve in a universe of uncertainties, a separation between policy development and policy implementation takes for granted that the environment is stable. Public-private partnerships explicitly imply that policies are elaborated before the action, in a detailed way, for a long period, without respect to issues that can potentially lead to a reformulation and, without the contribution of those in charge of implementing them.

Conclusion

This paper has argued that ethical considerations about public-private partnerships must take into account the potential effects they have on the policy cycle. Underlying public decisions to collaborate with a private actor assumes values that are particular to certain management practices and governance models. These values are often dissociated from the public interest, which leads to some side effects of public-private partnerships on policymaking. It has been argued that public-private partnerships imply a producer-consumer relationship with citizens, which has an impact on accountability and on ministerial responsibility. Furthermore, public-private partnerships have an impact on the policy cycle itself, for they impose a separation between two phases that are intimately linked: policy formulation and implementation. In the long run, this division will have several impacts on policies in general, for their rigid contractual nature ignores a long term reflection on policy re-formulation, a questioning of their real benefit in terms of quality of services, and an understanding of the important contribution the evaluation phase has on the policy cycle. In relation to the benefits of policy evaluation, although not solely related to public-private partnerships, is the potential attrition and erosion of the public service. Through service devolution to private partners, loss of institutional memory and expertise may have important consequences on policy making.

As expectations from civil society about the role of governments in service delivery rest on values tied to accountability and transparency, modern models of governance such as public-private partnerships may be a catalyst for decreased public participation in the policy process. As Stone (2002) mentioned, “public policy is about communities trying to achieve something as communities.” As such, democratic participation is closely connected to policy making. Public policy making comes with an array of interest groups but also with the possibility for citizens to voice their concerns and have an impact on policy development, even if their capacity to do so is not equal. The manner in which the state is organized will determine what citizens or groups can do. With the “new public management” came the “client” concept. Citizens, converted into clients, now have their say in the quality and type of services provided. Increased transparency and better access to decision makers through information technologies have helped citizens to become more informed and potentially more critical and demanding (Savoie, 2003). Although clients have been empowered on some levels, they are nonetheless not participants when it comes to public-private partnership decisions. As some authors have already noted, when public officials invest in a contractual relationship, they tend to put more emphasis on efficiency measures than citizen-centered responsiveness (Teicher et al, 2006). This reaffirms the fact that public partners may undermine their ethical responsibilities to local communities (Ghere, 2001). In other words, decision authority is diffused among an array of private and public actors that do not necessarily share the same concept of the public interest, if they share it at all.

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1 See Industry Canada website for a list of the different public-private initiatives. (http://strategis.ic.gc.ca/epic/internet/inpupr-bdpr.nsf/en/h_qz01552e.html)

2 See http://www.pppcouncil.ca/aboutPPP_definition.asp

3 Since the work done by the Task Force on Public Service Values and Ethics in 1996 (see A Strong Foundation: Report on the Task force on Public Service Values and Ethics), the Federal Government put a strong emphasis on ethics through its Officeof Public Service Values and Ethics (http://www.hrma-agrh.gc.ca/veo-bve/index_e.asp) and the Office of the Ethics Commissioner (http://www.parl.gc.ca/oec/en/).

4 See Burlone (2006).

5 “Objects considered valuable because of the imaginary social relations that they imply, as opposed to their usefulness.” (Cohn, 2004, p. 2)

6 For British examples, see Christian Rioux, Les Britanniques déçus par les PPP, La Presse, 6 mai 2006.