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Ethical Leadership in the Context of Globalization

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Paper:

Global Concepts for Ethical Leadership in Public Private Partnerships: Learning from an Australian ‘Great Controversy’?

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Abstract:

This paper proposes a formal governance model as the basis for a better universal understanding of concepts related to the ethical leadership of Public–Private Partnerships (PPPs). The fundamental concepts of the model are derived from continuing empirical, qualitative research (international literature and document review, local interviews) undertaken as a result of an Australian Research Council Discovery Grant (2005-2007). A case study relating to a Sydney, New South Wales (NSW), Cross City tunnel infrastructure PPP, which caused ‘great controversy’ is used to illustrate some of the leadership and governance failures within this PPP. Additional review of documents of supranational organizational guidelines and reports on PPPs is also applied. Of particular interest to the paper, beyond the traditional focus on the technical-rational system and the legal contract, is the importance of the usually implicit social contract surrounding PPPs. As the research finds, breach of the social contract through lack of ethical leadership and inappropriate behavior of the partners can have dramatic negative effects and jeopardize the intended outcome of the project.

Introduction

The idea of 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 neo-classical 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, 2007; 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 (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 governments' economic and social challenges, PPPs are widely used.

PPPs while a common form for implementing public policy, 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 goes to whether so-called PPPs are actually PPPs, at all, meaning an equal cooperative arrangement between the partners, or PFIs (Privately Financed Initiatives). PFIs might suggest a more hierarchical arrangement with government as the principal in an agency style relationship. This possible differentiation of organizational form will be considered later in the paper. However, for the moment, PPP is used here as a broad term encompassing 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).

More importantly, though, as an interest of concern, is the differentiation suggested by Weihe (2006) between the (hard) legal and the (soft) governance requirements of PPP arrangements. He further contends that the emerging literature on PPPs indicates that the legal dimension is dependent upon the contract, while governance largely relies on partnership trust. For the purpose of this paper, however, governance of PPPs encompasses both the hard and soft elements. As Bovaird (Governance International 2003, cited in Bovaird, 2004b: 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'.

Nevertheless, simply promoting the idea of good governance certainly does not address apparent deficits of governance within PPPs. In spite of the general global support for PPPs, problems within such arrangements, or outright failure, are not uncommon and may lead to significant taxpayers' risk (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. Yet, beyond technical-rational concerns there is a strong sociality surrounding these arrangements, typically in what Weick (2001:380) refers to as 'loosely coupled' organizations, especially where power-political behaviors may be concerned.

In cases where such negative governmental, power-political behaviors may be observed, in a way that may cause ‘great controversy’ (NSW Parliament, 2005), there are no apparent direct responsibilities for government to show more ethical leadership. ‘Ethical’ in this sense, is defined as ‘[R]elating to ... the principles of morality ... in accordance with the rules or standards for right conduct or practice ... (The Macquarie Dictionary, 1999: 727)

On the contrary, 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 paper is a consideration of how supranational organizations could, more realistically, be focused on the pitfalls of PPPs beyond a convenient and superficial grand rhetorical narrative that drastically simplifies considerable complexity and how better governance may be promoted. This is beyond the offering of technical-rational guidelines about good governance towards concerns for ethical leadership within the context of the social contract or the so-called soft relational dynamics surrounding PPPs.

PPPs and Supranational Organizations

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: 3).

This definition can also 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 (Searched March 2007). For the purpose of this paper, one substantial report relating to PPPs from each of these organizations has been extracted for analysis (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. From an analytical perspective, the purpose in terms of this paper 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 1 and 2).

The starting point for analysis is to undertake a keyword search of the reports in terms of words that might be relevant to ethical aspects of governance. As the reports are largely silent on the relational aspects of governance of PPPs, the analysis occurs within the context of a technical-rational legal environment (Table 1).

Table One – Incidence of Specified Keywords Relating to PPPs

| Keyword | WB report (90 pages) – Major Focus on Mobilizing Private Finance in PPPs | EU report (34 pages) – Major focus on PPPs, Community Law, Public Contracts and Concessions | UN report (22 pages) – Major focus on PPP Governance and Infrastructure Development |
|-------------------------------|---|--|--|
| 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) |

Source: Original Table derived from WB (2005), EU (2004), UN (2004)

The keyword analysis provides only a broad picture of the content of these reports but it is apparent that, from an explicit perspective, 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 connection. 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.

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 ‘mutual’ were mostly missing from the reports. Yet these concepts would seem to be an important aspect of the PPP relationship. The reports, in general, had limited interest in advancing ideas to address the social relationship created within the PPP, *per se*.

Furthermore, the only explicit reference to ‘ethical’ in these reports was in the UN (2004: 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: 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 settings in which PPPs take place, rather than the governance of specific PPPs, as such.

A more comprehensive scrutiny of these technical-rational style reports (Table Two) suggests that, beyond keyword analysis, the reports can be considered further within the context of a number of aspects relating to the governance of PPPs. For the purpose of this analysis, the allocation of issues into categories within the PPP domain (Table 2) is arbitrary but is done so for the purpose of simplifying and clarifying the analysis. From these summary details, it is apparent that the ethical dimensions of PPPs are of concern, even if ethical dimension are not defined explicitly.

Table Two – Summary of PPP Governance Issues Contained within the Reports

| PPPs | WB (2005) | EU (2004) | UN (2004) |
|-----------------------|---|---|---|
| Purpose | | | <ul style="list-style-type: none"> -create a public good -share allocation of risks (to partner most capable of managing the risk) -access private finance -access private sector expertise |
| Benefits | | <ul style="list-style-type: none"> -addresses budget constraints -knowledge sharing -consistent with state's role as purchaser & organizer -infrastructure development -innovative technological solutions | <ul style="list-style-type: none"> -new infrastructure -new technology -faster development of the good/service |
| Requirements | <ul style="list-style-type: none"> -adequate contractual framework -free of political interference -‘administrative efficiency’ (p9) -good corporate governance -system integrity (market regulation, property rights protection, no corruption, transparency) -coordinating unit | <ul style="list-style-type: none"> -transparency -mutual recognition -value for money -legal contract defines all elements of the partnership through universal or case by case rules | <ul style="list-style-type: none"> -robust legal framework which defines process -‘political commitment’ (p3) -effective public administration, such as a unit to oversee PPP -consideration of all stakeholders’ interests -long-term viability -no cost disadvantage for public |
| Accountability | <ul style="list-style-type: none"> -transparency in contract negotiation -dispute resolution -‘contract monitoring’ (p15) | | <ul style="list-style-type: none"> -value for money -clear measurable project goals -fair processes within specified criteria -public disclosure of public funds allocated -performance monitoring |

| | | | |
|---------------------------|--|---|---|
| Risk | -‘lack of political risk mitigation instruments’ (p13) -‘ex ante’, ‘ex post mechanisms’ to reduce ‘moral hazard’ (p25) | -distribution case by case | -Private sector bears construction & demand risk |
| Causes of Conflict | -tariffs determined politically and too low for cost recovery -breach of contract by government -unequal power (favors govt.) -govt. budgets & political issues distort relationships -no long term commitment | -complexity -exploitation through poor allocation of risks -the partnership changing over time as foreseen and unforeseen factors impact (circumstances, public policy, health & security issues) | -unfair governmental behavior, eg unilateralism |
| Dispute Resolution | -formal and informal dispute resolution | | -open resolution of conflict -agreed resolution methods in advance (formal, less formal) -includes mediation -independent public watchdogs |

Source: WB (2005), EU (2004), UN (2004)

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 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: 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’ with a ‘legal personality’. However, this also 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 messy 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 redress. In this vein, these reports attempt to control for an ever increasing range of variables through technical-rational redress.

The possibility that there are ethical obligations of the PPP actors through the (implicit) social contract is not raised at all. This is not to say that the social contract should be given primacy but that social, power, political issues relating to the governance of PPPs need to be considered along with explicit legal concerns.

PPP & the Academic Literature

It is not the intention of this paper to canvass, thoroughly, the increasing literature on PPPs. However, it is of note that the academic literature that has been developing around the governance of PPP also strongly concentrates on the technical-rational 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, Chege and Manchidi (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: 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 the breakdown within both the technical-rational and social systems surrounding the PPP. 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, however, involved.

Nevertheless, even if there are difficulties within the PPP, government has a major governance role and responsibility, primarily because its primary concern is protecting the public interest. Governments need to behave accordingly. This means that the ‘political rhetoric’ (Hodge, 2004: 41) surrounding PPPs needs to be differentiated from the substance of the legal contract and actual partner experiences within the PPP. However, Hodge also observes, that legal disputes within the complex network of relationships involved within PPPs seems 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, *per se*. However, social mediation might not be enough. Hodge (2004), using another Australian case study of a toll road in the State of Victoria, acknowledges the impact of power and politics within PPP governance arrangements and how relationships can break down. To this end, government, as the effective contract holder, may have disproportionate power and influence within the PPP and will use political behavior to achieve their ends. Thus, Hodge (2004: 46) contends that governments’ inter-penetration of politics into the governance of PPPs for government ‘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 pre-determined 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.

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 years’ period up until late 2005, \$AUD3.3 billion had gone into the development of private tollways through PPP arrangements. Nevertheless, infrastructure PPPs have been the subject of continuing public debate about their merit, not least of all because of the failure of some private companies to survive, particularly because of realized patronage risk (Barratt, 2003; The Premier’s Department, 2005; PPP Interviews, 2006).

In the city of Sydney one recent economic infrastructure PPP that was highly controversial involved the design, construction, operation and ownership transfer (after 30 years) of a cross city tunnel tollway. The government initiated the project, which it believed 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 (Legislative Assembly, 2005; The Premier's Department, 2005; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview, 2006; Greiner Interview, 2007).

Capital raised for the project by the successful private sector equity partners was \$A343.5 million and by the financial backers was \$A502.5 million. The investment capital, the highest offered in the tendering and contract award process included an up-front payment to the government of approximately \$A97 million which was to cover unbudgeted additional costs (56% of the \$A97 m) and a right-to-operate fee (46% of the \$A97m). While this PPP obviously involved great complexity, for the purpose of this paper, only a summary of critical aspects is included here (Legislative Assembly, 2005; The Premier's Department, 2005; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview, 2006; Greiner Interview, 2007).

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 minister and 5 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 (RTA, 2003; Legislative Assembly, 2005; The Premier's Department, 2005; Four Corners, 2006; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview 2006).

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) (Legislative Assembly, 2005; The Premier's Department, 2005; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview, 2006; Greiner Interview, 2007).

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 (Legislative Assembly, 2005; The Premier's Department, 2005; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview, 2006; Greiner Interview, 2007).

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 colourful 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 government attempted to resolve the issues in their own individualistic ways, in the atmosphere of a continuing disenchanting public.

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 (Legislative Assembly, 2005; The Premier's Department, 2005; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview, 2006; Greiner Interview, 2007).

Eighteen months after the tollway opened in December 2006, the Company was placed in the hands of an Administrator. To this day, the dispute between the partners remains unresolved and is now the subject of legal proceedings with at least \$A100 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 another private operator cannot be found and the tollway sold on to another private operator.

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 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 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 at all, given government's behavior over time and the fact that government by its actions seems to have 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. This also included, for the partners the lack of ethical management and leadership of the range of pertinent stakeholders including the community of interest, beyond the partners. Instead of the PPP involving a collaborative-cooperative arrangement or relationship, the so-called partnership became increasingly conflicting (Legislative Assembly, 2005; The Premier's Department 2005; Four Corners, 2006; Harris Interview, 2006; Parliament of New South Wales, 2006; Ritchie Interview, 2006).

Reflecting on Failure

Numerous reports were commissioned by government or undertaken by Parliamentary committees or government watchdog agencies in relation to PPPs in NSW (Legislative Assembly, 2005; The Premier's Department 2005; Audit Office of NSW 2006; Parliament of New South Wales, 2006). Two were more general in nature (The Premier's Department, 2005; Legislative Assembly, 2006) but 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. Using the same keyword analysis as for the three supranational reports it is apparent that issues of ethical leadership remain largely neglected in these reports, too (Table 3).

Table 3 – Keyword Analysis of PPP Reports NSW

| Keyword | The Premier's Dept. (2005) (64 pages) | Parliament of NSW (2005) (248 pages) | Audit Office of NSW (2006) (93 pages) | Legislative Assembly (2006) (143 pages) |
|-------------------------|--|---|--|--|
| 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 |

Source: Original Table, sources as indicated, above

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, similar to the supranational organizations' reports. A closer perusal 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 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.

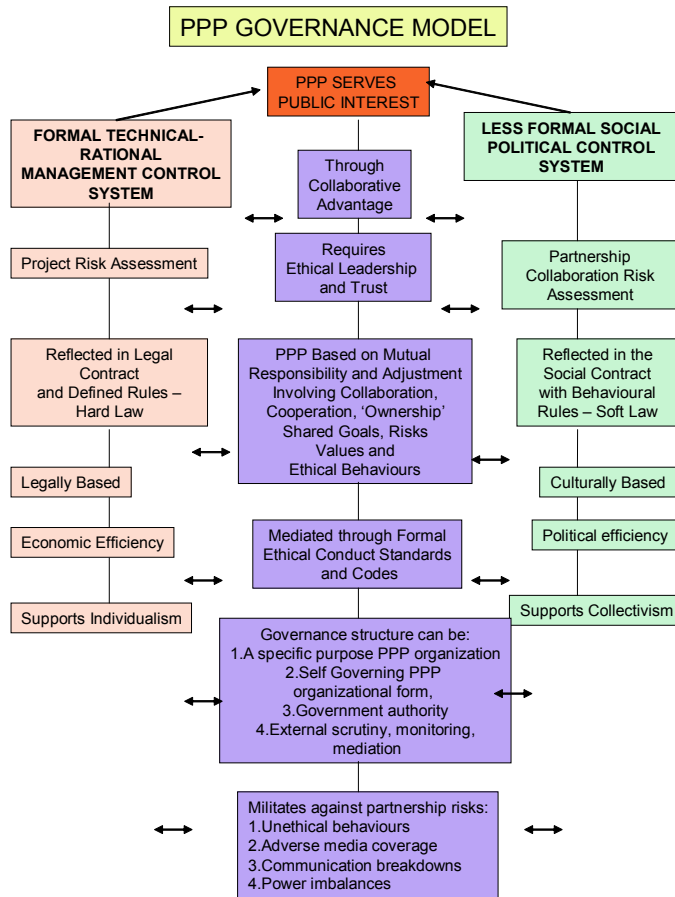
Aspects of the social contract, or the actual behavioral relationships, are not an interest of the reports at all, not even in a technical-rational sense. Yet in this particular case it was evident that the social relationship, if it ever existed in a positive way, collapsed at its first real test at 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

Beyond the case study of the CCT, the overall evidence adduced in this paper 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 and the soft can be brought together within a broader and hopefully, more meaningful, governance system for PPPs (Table 4). 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 ask 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). As Bovaird (2004b: 207) suggests, when public sector organizations are not in a position to act on their own to implement public policy, then a partnership arrangement which aims to result in a collaborative benefit may be the key. A simple principle which needs to underpin any such arrangement 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 of these systems can then be governed for the purpose of the PPP needs to be underpinned with formal legal and behavioral requirements.

Table 4 – Proposed Model of PPP Governance and Ethical Leadership



Source: Original Table based on the research, and ideas in Bovaird (2004b); Hofmeister and Borchert (2004); Haque (2004); Sadran (2004); Sedjari (2004); Greiner (2007)

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, *per se*, 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 political acting out 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 break down in the social contract within a PPP, or PFI, (however defined) may jeopardize their financial rating it would be expected that they might take note. Dignified public behavior of governments that diminishes tax payer 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). First, a specific purpose, formal organization could be created between the partners relating to the creation of a PPP with 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 major infrastructure development. Greiner (Interview, 2007), for example, 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. 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 models, 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 from 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 paper has explored numerous issues relating to the explicit technical-rational, legal systems surrounding PPPs as well as the usually implicit social contract, which pre-supposes 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 whether 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 paper 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. Nevertheless, it is also recognized that the nature of politics will probably mean that some governments will continue to resist an approach of 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 a far stronger political advantage than governments continuing to be unprincipled and unilateral in their approach to such important contractual arrangements.

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