

Chapter 12

Public-Private Partnerships and Urban Governance: Coordinates and Policy Issues

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Policymakers, practitioners, and academics around the world make compelling arguments for bridging public and private sectors through alliance, collaboration, and partnership. Based on the logic of pragmatism, they cast these arrangements as innovative and resourceful ways of dealing with the intensifying demands of urbanization. Infrastructure policy specialists in particular, citing a combination of economic and institutional forces, emphasize the central role public-private partnerships (PPPs) can play in meeting the pressing need for new large-scale investments and the equally urgent need to refurbish existing systems. Construction engineering experts support the paradigm shift as a new way to solve particular problems in contracting for large-scale construction projects.¹ For governments and international donor organizations eager to enhance productivity and stimulate economic growth, PPPs represent an efficient means to expand the scope of their development investments while securing advanced technological expertise.

The driver of change, typically, is financial. Worldwide, governments face fiscal constraints from limited (or cash-starved) budgets and heightened voter sensitivity to taxes. For the past several decades, fiscal pressures have prompted government officials to experiment with innovative approaches to the intense technical challenges of planning, designing, financing, and executing large-scale infrastructure projects for the development and delivery of urban services. The ensuing big-three PPP formats—asset-sale privatization, contracting out, and cooperative or joint venture agreements—comprise an alphabet-soup list of acronyms affording public officials diverse alternatives to the traditional public-sector procurement model, which many experts benchmark as bureaucratically inefficient and costly.

The worldwide momentum for PPPs has emerged from the support of a broad and diverse coalition that sees the strategy as a reform of urban governance as much as a pragmatic fiscal imperative. Complex urban problems and a better quality of urban services, policy reformers argue, are no longer solvable solely by traditional state intervention. Multifaceted approaches are required, including new institutional arrangements that devolve power from the national center to local government and reinvent government by engaging the private market to deliver urban services in cooperation or competition with public agencies (Osborne and Gaebler 1993; Moore and Pierre 1998; Engberg 2002). International funding organizations like the World Bank, the Asian Development Bank, the Japan Bank for International Cooperation, and the Inter-American Development Bank have entered the PPP advocacy tent, seeking to promote and expand the development of needed infrastructure around the world (USFHWA 2007a). And relatively recently, the European Union (EU) accepted the PPP as a "complementary implementation tool," linking PPP use to its initiatives for economic development and competitiveness (EC 2004; EC 2003; Newman and Verpraet 1999; Elander 2002; Grimsey and Lewis 2004).² In the U.S., the Department of Transportation, through its surface transportation administrations, aims to expedite urban transportation projects by encouraging state and local transportation agencies to consider the "selective use" of PPP approaches (USFHWA 2007b, 4–2). On the political front, some leading politicians have adopted PPPs as a central tool of governance within their ruling party's wider "modernization" agenda, as did Labour's Tony Blair when he became prime minister of the UK in 1997 (Flinders 2005). In short, the collaborative approach of the PPP paradigm theoretically affords government several strategic advantages, albeit with a trade-off: growing unease over traditional public-sector values that seem to get jettisoned on the path to collaboration.

Policymakers have fed upon the optimism about PPPs to accelerate applications to broad and diverse urban problems across the globe. Between 1985 and 2004, worldwide PPP infrastructure projects worth more than \$2 billion had been planned and funded, with 53 percent of them completed by the end of 2004 (USFHWA 2007a). In some countries, PPP has been an experimental innovation (Netherlands, Spain, Finland); in others, an ideological force (United Kingdom, Canada, Australia); and in still others, a variant on a history of mixed enterprise (United States, France, Singapore). PPP slogans often reveal these political drivers: "A New Framework for Infrastructure" (Asian Development Bank et al. 2005); "PFI: Meeting the Investment Challenge" (HM Treasury 2003); "Partnerships for Progress" (National Council for Public Private Partnerships 1998); "Working Together" (Farlam 2005).

Whether for urban redevelopment/regeneration, transportation and environmental infrastructure, housing and homelessness, hospitals, schools, or economic development, the PPP model and its many variants has become the policy of choice for municipal government in the U.S., and an increasing number of countries in Europe and Asia. As practiced today, public-private collaboration marks a broad convergence of current economic forces and changing political paradigms. For the public sector, PPPs symbolize the search for greater efficiency of urban service delivery and resourceful mobilization of private capital to ease financial constraints and strengthen weak fiscal positions. For the private sector, PPPs represent an economic cornucopia of potential opportunity in urban markets across the globe.

Evidence of the strategy's effectiveness is not extensive (though it is growing) relative to the number of PPP initiatives, and what exists is mixed (Daniels and Trebilcock 1996; Boase 2000; Public Citizen 2003; HM Treasury 2003; Flinders 2005; Siemiatycki 2006; Koppenjan 2005; Murray 2006; Cambridge Systematics 2006; USFHWA 2007a, 2007b). I can offer several (less than satisfying) explanations for this state of affairs. First, a PPP project takes a long time to execute before data can be marshaled for evaluation, and the full implications of performance may not even be understood for many years after a project's completion. Second, in the absence of a statutory or administrative mandate or a political decision to repurchase a concession or provide a subsidy, government stakeholders do not have strong motivation to undertake ex post evaluations that might reveal disappointing results or embarrassing and costly construction overruns. Third, the information needed to assess performance of a PPP project is, more often than not, confidential. Fourth, because each project has a nearly unique set of complexities, general lessons are hard to come by (Sagalyn 1990, 2007), especially from experiences in emerging market economies.

Nevertheless, experience with PPPs in the U.S., Europe, and Asia has consistently brought to the fore common issues of governance, which are the focal point of this chapter. These public policy concerns are not particular to the PPP model, but the political rhetoric and elevated expectations for performance from cooperative (as opposed to adversarial) sector relationships add tension to the issues of accountability. In so doing, they amplify the political risks of adopting the PPP model as a governance reform.

In this chapter, I describe the coordinates of the global application of PPP and identify central commonalities of sector collaboration for both infrastructure development and urban redevelopment/regeneration projects. The comparison across these two types of "hard" asset-based initiatives will, I hope, highlight the central issues of implementation

and underscore the need for policymakers to address the nature of risk sharing, which I believe is central to the PPP strategy at the project level. It should also provide an understanding of how weak management of accountability concerns is likely to intensify the political risks of the PPP strategy.

Partnership Coordinates

Government officials have rapidly expanded application of the PPP model to an ever-broadening set of urban service needs. In the realm of service infrastructure, asset-based partnership projects take in waste water and sewage treatment works, power plants, pipelines, telecommunications infrastructure, public-use motorways, toll roads, toll bridges, tunnels, road upgrading and maintenance, railways, subways, light-rail systems, airport facilities, harbors, affordable housing, student housing, school buildings, government offices, fire and police stations, hospitals and other health services, social housing, prisons and secure training centers, parking stations, and museum buildings along with other projects for recreation and tourism. (See table 12.1 for a list of illustrative PPP projects.) In the realm of urban redevelopment, what began with initiatives for downtown development would now include waterfront transformation, historic preservation, brownfield development, neighborhood commercial-center revitalization, community development lending, and military base conversions. The open character, flexible format, and customization of project-specific business terms and conditions for public-private sharing of risks and responsibilities make the PPP model highly adaptable (Sagalyn 2006). Some PPP projects, like prison services, remain controversial (Grimsey and Lewis 2004; Verkuil 2007), while certain others, like information technology and small capital projects, are not particularly amenable to the PPP strategy (Kumaraswamy and Morris 2002; Koppenjan 2005; Flinders 2005).

In theory, the market-based logic of PPP promises to deliver design and management innovations as well as economic efficiencies. In practice, the institutional architectures needed to execute these multiple objectives are complex. The processes and procedures necessary to select private concessionaires, services providers, or real estate developers willing and able to operate in the public interest pose a challenge to existing public expertise, and the contract arrangements and joint-venture agreements necessary to implement these projects are exceedingly difficult to design and negotiate. Public players must be skilled politically as well as technically versed in the details of what it takes to deliver the infrastructure service or redevelopment/regeneration project. The

Table 12.1: Illustrative Scope of PPP Projects

<i>Projects</i>	<i>PPP Format</i>	<i>Date Project Begun</i>
42nd Street Development Project (New York, USA)	Redevelopment PPP	1980
A1, A2, A4 Motorway Toll Roads (Poland)	Concession	1997
A59 Road (Netherlands)	DBFM	2001
Abbotsford Hospital (British Columbia, Canada)	DBFOM	1987
Alliance Airport (Texas, USA)	Development PPP	1989
Atlanta Water Service (Georgia, USA)	O&M Contract	1998
Asia World Expo (Hong Kong, China)	BOT	2003
Bangkok Elevated Transport System (Thailand)	BOT	1991
Battery Park City (New York, USA)	Redevelopment PPP	1969
California Plaza (Los Angeles, USA)	Redevelopment PPP	1981
California State Route 91 HOV lane (USA)	BTO	1995
Castlemaine Sewage Treatment Plant (Australia)	BOOT	1998
Channel Tunnel Rail Link (England / France)	BOT/PFI	1988
Charleswood Bridge (Winnipeg, Canada)	DBFO	1993
Chengdu No. 6 Water Plant B Project (China)	BOT	1997
Chicago Skyway Lease (Illinois, USA)	Concession	2004
Country Park Motorway (Hong Kong, China)	BOT	1993
Dartford Crossing Bridge (London, UK)	DBFO	1986
Debrecen Municipal Waste Water System (Hungary)	Joint venture	1991
Delfland Waste Water Purification Plant (Netherlands)	DBFO	1999
Dulles Greenway (Virginia, USA)	DBFO	1988
E-470 Tollway (Colorado, USA)	DBO	1985
Franklin Waste Water Treatment Plant (Ohio, USA)	DBFOT	1995

Table 12.1: (Continued)

<i>Projects</i>	<i>PPP Format</i>	<i>Date Project Begun</i>
Helsinki-Lahti Motorway (Finland)	BOT	1995
Highway 407 (Ontario, Canada)	DBO	1993/4
Hudson-Bergen Light Rail (New Jersey, USA)	BOT/DBOM	1994
Indiana Toll Road Lease (USA)	Concession	2005
Labin B Power Plant (Guangxi, China)	BOT	1997
JFK Airport Terminal 4 (New York, USA)	Development agreement	1995
Labuan Water Supply (Malaysia)	BOT	1993
Las Vegas Monorail (Nevada, USA)	BOT/DBOM	1993
M1-A1 Link (Leeds, UK)	DBFO	1993
M5 Transport (Hungary)	Concession	1992
M4 Toll Motorway (Sydney, Australia)	BOT	2003
Maasvlakte II (Netherlands)	Combination model	2001
Melbourne CityLink Toll Road (Australia)	BOOT	1994
Melbourne Convention Center/ Development (Australia)	Development agreement	2004
Millau Viaduct (France)	Concession	1998
New Dockland Stadium (Melbourne, Australia)	BOT	1996
Phoenix Water Treatment Facility (Arizona, USA)	DBO	2000
Pipeline Rehabilitation Services (Bucharest, Romania)	Concession	2000
Pocahontas Parkway Route 895 (Virginia, USA)	DBFO	2004
Prince Edward Island Fixed Link (Canada)	DBFOT	1985
Olympic Stadium (Sydney, Australia)	BOOT	1995
Pearson International Airport Terminal 3 (Toronto)	DBFO	1986
Richmond-Airport-Vancouver Line (BC, Canada)	DBFO	2001

Table 12.1: (Continued)

<i>Projects</i>	<i>PPP Format</i>	<i>Date Project Begun</i>
Rosario-Victoria Bridge (Rosario/Victoria, Argentina)	DBOM	1997 ^a
Route 28 (Virginia, USA)	DBT	2002
Schwerte Municipal Waste Water System (Germany)	Joint venture	1993
Second Vivekanda Bridge (Kolkata, India)	BOT	2004 ^a
Shajiao B Power Plant (China)	BOT	1984
Sijtwende Road (Voorburg, Netherlands)		1999
Sofia Water and Wastewater Project (Bulgaria)	Concession	2000
South Bay Expressway SR 125 (California, USA)	DTO franchise	1991
Sydney Harbor Tunnel (Australia)	BOOT	1987 ^a
Sydney SuperDome (Australia)	BOOT	1997
SH 130 (Texas USA)	DBFO concession	2006
Union Station (Washington, D.C., USA)	Redevelopment PPP	1981
Yeuba Buena Center (San Francisco, USA)	Redevelopment PPP	1980
Yitzhak Rabin Trans-Israel Highway (Tel Aviv, Israel)	BBFO	1999 ^a

Sources: Various.

Note: Date project begun generally means date the public sector started planning the project; in select instances where that date is not available from online information, the date begun represents the date the private vendor was selected. ^a Indicates start of construction; start date of project planning and/or public-sector initiative unavailable.

details of specific project conditions and public objectives matter a lot. Political cultures vary and shape the institutional context of contracting. Rate-setting constraints on cost recovery or profits, extraordinary programmatic public benefits, or other policy mandates can create potential losses in economic efficiency and reduce private investment value (Daniels and Trebilcock 1996). When PPP projects carried out by numerous independent public agencies proliferate, fragmentation of policy coordination is another potential problem (Flinders 2005). Alternatively, when driven by a central government, as in the case of airport

privatization in Australia, the process might "quarantine" adjacent commercial development from the scrutiny of state and local planning processes (Freestone et al. 2006). And as nearly all reviewers of case-based experience point out, sector partnerships cloud accountability.

To what extent might any of these unintended consequences induce a political backlash or counterproductive trend undermining the broad convergence behind and potential gains of the PPP strategy (Engberg 2002)? The question holds practical consequence because the ways in which policymakers address the governance issues inherent in policy trade-off of PPPs are likely to influence the political legitimacy of the reform approach.

Political Economy

Rooted political traditions and institutional cultures of both business and government distinguish different forms of privatization and partnership in countries around the world. Statutorily and politically, a spectrum of weak to strong PPP environments exists (Van Boxmeer and Van Beckhoven 2005). In the U.S. a long tradition of public-private interplay exists, in contrast to Europe, where centrist models of national-local government relations and active government intervention in social welfare and economic markets have been dominant. Comparatively placed by a number of researchers, the UK, for example, is somewhere between the strong-state European model and the market-oriented U.S. experience (Newman and Verpraet 1999).

Culturally constrained powers can readily limit what a PPP can achieve. For example, Adams and Hastings (2001) analyzed the performance of Hong Kong's Land Development Corporation (LDC) prior to 1997 to evaluate how the U.S. pattern of public-private development translated into local experience. Their detailed case analysis revealed that specific development powers and resources mattered, not just the institutional model of action. Culture mattered too because it influenced the powers and resources government was willing to give to public-private entities. Lacking eminent domain powers and resources for rehousing those displaced limited the LDC's accomplishments; the corporation did not have legal powers to acquire sites and so could assemble land only by negotiation and pay market (and, in practice, above-market) prices, which limited its financial performance. The Hong Kong government insisted on very close ongoing scrutiny of the LDC's operations and mandated specific bureaucratic procedures because of its commitment to public accountability and the fear of corruption. The LDC produced much-needed housing, but this outcome "merely replicated the kind of small-scale redevelopment produced by the private

sector elsewhere" (Adams and Hastings 2001, 483). As a result, the authors found little benefit beyond what the market would have produced without the LDC.

Political economies at the national level of government aside, researchers studying redevelopment/regeneration continue to find a "convergence in practice" at the municipal or community level. They trace this to the idea of market-led project feasibility and its corollary practice of interfacing with private interests early in the planning and implementation process (Moore and Pierre 1988, 169; Frieden and Sagalyn 1989; Van Boxmeer and Van Beckhoven 2005).

Allocating risk between public and private sectors is the core of the PPP strategy. The precise mechanisms of ownership, financing, usage rights, and obligations for production, delivery, and service can be rearranged into different allocations of public and private responsibility, which is what government officials in the United Kingdom, North America, Europe, and Asia have been experimenting with for the past three decades. This experimentation has produced diverse public-private business models, especially in the area of service procurement, as shown in table 12.2. Pure privatization—when government disengages totally through transfer of ownership to a private firm which takes over assets and assumes responsibility for service delivery—differs from the many formats of contracting out, which in turn differ legally and financially from the joint venture.

Substantial variations in procurement laws and procedures exist worldwide (and within federalist government systems such as the U.S.), making generalizations about contracting out tenuous. Yet more than the involvement of private enterprise per se, what distinguishes PPP infrastructure contracting arrangements is bundling. Bundling ties together traditionally discrete procurement processes of design, financing, construction, operations, and maintenance. By vertically integrating some or all of these functions, bundling creates the potential for greater economic efficiency because private companies have a financial motivation to think in ways that might generate greater productivity and cost efficiencies *over time*, that is, for the duration of their service contract (Daniels and Trebilcock 1996). It also can open up to competition a set of economic activities previously excluded from that process (Grimsey and Lewis 2004).

Project-level PPPs for infrastructure delivery represent an array of contract arrangements differentiated by three elements: the services bundled (the degree of private control over service delivery and level of policy control retained by the public entity), the level of private-sector financial commitment (risk-taking), and the ability and willingness of the public sector to share these risks. In each variant of contracting out,

Table 12.2: Range of Public-Private Business Models

<i>Type of PP Model</i>	<i>Acronym</i>	<i>Public Interface</i>
Public provision of collective goods		Complete public provision
Outsourcing/contracting Service provision contracts		Generalized procurement Service procurement
Design and construct	D&C	Service procurement
Sale and leaseback	S&L	Ownership transfer and contracting
Operate and maintain	O&M	Service procurement
Operate, maintain, and manage	OM&M	Service procurement
Build transfer operate	BTO	Service procurement and capital asset
Build operate transfer	BOT	Service procurement and capital asset
Build lease transfer	BLT	Service procurement and capital asset
Build lease transfer maintain	BLTM	Service procurement and capital asset
Build own operate	BOO	Service procurement
Build own operate maintain	BOOM	Service procurement
Build own operate remove	BOOR	Service procurement
Build own operate transfer	BOOT	Service procurement and capital asset
Build own operate train transfer	BOOTT	Service procurement and capital asset
Design build operate	DBO	Service procurement
Design operate transfer	DOT	Service procurement and capital asset
Design build finance operate	DBFO	Service procurement
Design construct manage finance	DCMF	Service procurement
Design build finance operate manage	DBFOM	Service procurement
Lease renovate operate transfer	LROT	Service procurement and capital asset
Rehabilitate own operate	ROO	Service procurement
Rehabilitate operate transfer	ROT	Service procurement and capital asset
Private finance initiative	PFI	Service procurement (U.K. model)
Franchise		Licensed service agreement
Concession		License service agreement
Business Improvement District	BID	Special taxation and codecision making
Joint venture	JV	Co-investment "mixed enterprise"

Table 12.2: (Continued)

<i>Type of PP Model</i>	<i>Acronym</i>	<i>Public Interface</i>
Community development bank	CDB	Cocapitalized lending venture
Redevelopment partnership		Co-investment "mixed enterprise"
Outright privatization		Complete private ownership and provision

Source: Grimsey and Lewis 2004, 54; Kumaraswamy and Morris 2002, 95; Briffault 1999, 368; Flinders 2005, author.

Notes: **Outsourcing or contracting out:** arrangement in which the public sector maintains ownership or policy control (for example, rate setting) of a function but contracts with a private operator to discharge that function through some type of procurement process over a contractually defined period of time.

Procurement process: arrangement in which the public sector decides on a mix of rights and responsibilities—risk allocation, operation, financing, maintenance, performance—of a service over a contractually defined period of time.

Private Finance Initiative: formal UK model in which the private sector provides capital for a project as well as builds and often manages a facility in turn for a long-term (twenty-five years or more) contract in which the government commits the state to pay an annual fee for the use of the facility. This is akin to a long-term service lease arrangement.

Franchise: arrangement in which a private firm is granted a license to operate/provide services in a particular territory for a contractually defined period of time.

Concession: legal arrangement in which a private firm is granted land or property for a particular purpose for a contractually defined period of time in return for services; in France, which has a long history of concession contracting, entrepreneurs are given a franchise to provide services such as water and electricity for a specific period of time, after which the infrastructure is returned to the public entities.

Business Improvement District: business-initiated territorial arrangement within a city in which all property owners or businesses are subject to additional tax assessments that are used to fund services and improvements within the district and to pay for the administrative costs of the BID operations.

Joint venture: arrangement in which private and public entities jointly undertake the development (and perhaps operation and maintenance) of a facility that will provide services.

Community development bank: lending venture jointly capitalized by government and private sector funds designed to leverage private capital for loans, guarantees, venture capital, grants and technical assistance to small businesses in disadvantaged neighborhoods. The Los Angeles Community Development Bank, created by the U.S. government in 1995, was capitalized with \$435 million from the U.S. Department of Housing and Urban Development and \$210 million from regional commercial banks.

Redevelopment partnership: a project-based arrangement that typically involves co-investment by the public sector. The public investment may involve all manner of direct or indirect financial assistance as well as regulatory relief, bureaucratic expediting, and related forms of project assistance. The public entity (or entities) may or may not be a co-owner of the project in the legal sense, notwithstanding profit-sharing arrangements.

Outright privatization: sale of an asset to private ownership, which delivers services from that asset under terms that may involve subsidization and/or regulation by the public sector.

though, the public-private relationship redirects service delivery from unidirectional agency to public-private coproduction—an institutional move challenging the structure and values of public-sector agencies (Engberg 2002). Politically, the emphasis shifts as well: "What matters is

what works," said Britain's former prime minister Tony Blair in an often-quoted phrase (*Financial Times* 1998, cited in Newman and Verpraet 1999, 489).³ In short, adoption of the PPP strategy signifies regime reform.

The joint venture or development agreement partnership differs from contracting-out formats, which circumscribe the nature of the public-private relationship to what is specified in the contract. Regeneration and economic development PPPs, for example, typically involve more of a commitment than what transmits in the development agreement. In practice, they include what cannot be anticipated—an implicit mutual commitment to deal with unexpected project-threatening crises if and when they occur, which may mean renegotiating the agreement if necessary to ensure successful execution of the project (Frieden and Sagalyn 1989; Bovaird 2004; Sagalyn 2001). All types of public-private ventures share a significant commonality: the negotiated allocation of risk and control between public and private partners. This is the core of the PPP business relationship, in theory and practice, so much so that it even shapes the potential for partnership.

For example, in a comparative analysis of nine transport projects in the Netherlands, Koppenjan (2005) asked what made for the successful *formation* of a PPP project. Because not all projects or public entities are amenable to PPP, understanding the determinants of successful formation is actually a more important research question than might be apparent at first blush. Koppenjan wanted to understand the nature of the problems encountered in creating these partnerships and how they should be dealt with. He identified three formation patterns: quick take-off; early private involvement supported by interactive decision-making techniques, but difficult movement forward; and hesitant and risk-avoiding behavior, resulting in disappointing outcomes, followed by unilateral public planning, then stagnating contract negotiations. Success was most apparent when the decision-making process embedded active engagement of the partners, which he termed "interaction." Financial reasons are typically the strongest motivation behind infrastructure transport PPPs, for both public and private entities. Whether or not they could be achieved in every instance turns on market-based potential trade-offs supporting a project's financial feasibility. Expensive projects, he argued citing numerous sources,⁴ are capable of being made affordable and/or generating cost savings for government through several channels: gains in efficiency, the creation of cash flow between construction and market delivery, financial trade-offs between profitable and nonprofitable project parts, value capture from increases in property values near infrastructure used to contribute to the financing of a project's construction, and benefit sharing whereby public authorities share

in the profits of the private partners. Many of these trade-offs involve the potential for commercial real estate development, which does not calibrate the same way across all types of infrastructure. For example, because it is spatially spread out, line infrastructure like roadways and railway links appear to offer less trade-off potential than point infrastructure, such as traffic intersections, railway stations, and airport terminals.

Complexity

Considering how players handle implementation, partnerships for redevelopment/regeneration and infrastructure projects share a number of common traits that make them complex undertakings. The product is typically complicated in its technical specification. It is demanding in terms of public policy ambition as well as financial feasibility. Each side of the partnership is typically populated with multiple players, public and private entities themselves representing infrasector collaborations. With infrastructure bundling, for instance, bidding private partners often form consortia ("virtual corporations") because "the functions involved are highly specialized and entail deployment of quite different bodies of complementary expertise and resources" beyond the capabilities of individual firms unless a firm is vertically integrated (Daniels and Trebilcock 1996, 390). For redevelopment/regeneration projects, state and local government entities regularly collaborate to facilitate funding, marshal powerful financial incentives, or expedite entitlement approvals (Sagalyn 2001). The whole gets fashioned into a project-specific organizational network governed by the business terms and conditions of the contracting arrangement, concession or franchise agreement, long-term ground lease, or disposition and development agreement. These organizational networks make confronting public officials responsible for managing a PPP project negotiation a rather complex operation, since they must secure agreement to not one, but a series of consistent and interlocking agreements detailing each participant's rights and obligations in implementing the project. "The complexity of intergovernmental relationships should make one wary of over-generalizing typologies," two researchers cautioned in their assessment of the impacts of European regeneration PPPs on urban governance—an observation that could just as easily apply to the U.S. experience (Newman and Verpraet 1999, 487).⁵

Government detachment is the linguistic myth of "privatization," in any contracting-out format. In practice, contracting out may involve government-backed financing, regulatory restrictions, and ongoing subsidy, or it may implicate other public policy concerns that involve ongoing monitoring of governance. Government actions create assets with pri-

vate-sector value and embed economic rights—long-term fee-based revenue streams, special development incentives, and opportunities to capture value from adjacent real estate development—that can readily beget political risks.

A compelling set of experiences comes from a detailed review of three high-profile Canadian infrastructure projects.⁶ In this study, Daniels and Trebilcock (1996) found that despite the depiction of economic benefits to the government from private-sector efficiency and risk-bearing, each project included some significant role for government in project financing or long-term subvention. Their analysis of primary project documents also revealed that “each of the projects implicated a range of public policy concerns that could not be sidestepped by the decision to develop the project through a public/private partnership” (387). These policy concerns included right-of-way and eminent domain issues, the effectiveness and transparency of levers for government action after construction had been completed, network externalities, monopoly pricing concerns, and operator compliance with specific governmental laws. The need to respond to these policy concerns, they saw, “was often in direct tension with the need to provide credible assurances to the developer/operator (as an inducement to investment) that the franchise value of the undertaking would not be debased ex post by direct government action” (388).

What these legal scholars emphasize and elaborate on in their thorough analysis is how, beyond the technical character of the capital asset or flow of services to be provided, the status of government as a partner imposes particular and complex demands on contracting arrangements used to implement public-private partnerships.⁷ Government, as other researchers similarly concluded from case analyses of PPP projects, can be “a capricious partner” (Van Ham and Koppenjan 2002, 600; see also Levy 1996, cited in Kumaraswamy and Morris 2002; Bassett et al. 2002). That unanticipated government action creates problems for private market investments is not unique to PPP circumstances. Rather, as Daniels and Trebilcock (1996, 388) emphasize, these problems are “particularly acute” in PPP situations because private investors are asked to sink large up-front costs in physical bricks-and-mortar facilities, which, once in place, cannot be moved if underlying economic conditions shift. The same is true for both physical infrastructure and redevelopment/regeneration projects.

Complexity is the structurally bedeviling feature of public-private partnership arrangements. It impacts the chances of successfully forming a partnership. It influences how partnership decisions get made. It has a cost in attenuating potential efficiency gains (often presciently evident in the size of a project’s legal fees). Deals *become* complex, I wrote in

1990, based on research for *Downtown Inc.: How America Rebuilds Cities*: “Most cities do not set out to make public/private deals complex, to obscure costs, or to confound critics. Rather, the deals become complex as cities try to match their many policy goals against the constraints of public financing and the demands of private real estate investment” (Sagalyn 1990, 437). In this early work on public-private redevelopment, I also explained the political purposefulness of complexity and how it confounds rational approaches to greater accountability. “The lack of comprehension of complex deals acts as a shield against close scrutiny: what is difficult to understand is more likely to be left alone. With such compelling forces at play,” I wrote, “where are the incentives for change” (437)? Seventeen years later, I am still grappling with this question and the range of accountability issues complexity begets, as I will discuss in the next section.

Governance Agitations

The theory and rhetoric behind the PPP movement set up high performance hurdles for these projects. They were promoted as a means of providing more cost-efficient delivery of urban services, stimulating innovations in technology and the design of complex physical infrastructure projects, shifting the very substantial risks of public capital investment to private ownership, reducing the bureaucratic snags in the approvals system, and expediting the implementation of large-scale public initiatives in city building, regeneration, or economic development. In short, carrying promise as a multifaceted reform remedy for urban governance at a time when direct government action needed both a new cloak of political optimism and a deep source of capital funding, PPPs were bound to disappoint many in government, policy circles, and the academy, especially skeptics waiting in the wings. The limited evidence on performance from detailed case studies of ambitious and complex PPP projects, mostly for physical infrastructure, consistently reveals that results have been considerably less than the theoretical and rhetorical claims. But in what ways, and by what dimensions, has the reality fallen short of expectations? Where are the weak or naïve links between theory and practice in plan, design, and execution? What lessons can we take away from these case experiences to improve our understanding of what is realistically possible and probable in complex PPP projects?

Risk and Economics

On risk transfer and cost efficiencies, the results present a weak story line, so far. For the majority of case studies discussed in published

research, academics found that government ended up sharing significant financial risks, either in the form of a long-term public subvention (in Canada: Prince Edward Island Fixed Link/Confederation Bridge and the Richmond-Airport-Vancouver Line; in the United Kingdom: National Air Traffic Services, Devonport Dockyard; in the United States: Tacoma Narrows Bridge project); or takeover (UK: Channel Tunnel Rail Link; Hungary: M1-M5 Motorway; Texas: Camino Columbia project); or government-backed financing for the entire project (Canada: Highway 407);⁸ or government payment of compensation for contract cancellation (Canada: Redevelopment of Pearson Airport Terminals 1 and 2).

PPP is not a one-size-fits-all strategy. The type of project and service delivery shapes the reality of risk transfer. Case evidence suggests that substantial risk can be transferred to the private sector in transport projects *provided* that demand forecasts and revenue streams are well identified. Case evidence also demonstrates the potential for failure if demand forecasts are exaggerated and other fundamental issues (cost control and rigorous planning and financial preparation) are not carefully addressed or if sustained and committed political support is absent. And case evidence further demonstrates the risk of not transferring enough risk and responsibility or, conversely, transferring too much (EC 2004). Certain public services, like the London Underground, for example, are highly capital intensive and present a formidable challenge to risk transfer because the level of user charges necessary to cover capital and operating costs would either dramatically reduce demand, thereby exacerbating the financial problem, or create a politically untenable situation. Other services like air traffic control, policing, water supply and solid waste management, and highway safety are essential to a functioning civil society. When PPP projects in the essential service realm are in danger of failing, government has little choice owing to legal or political consequences but to bail out PPP contractors who get into trouble, as the U.K. Public Accounts Committee noted in its 2002–2003 report on the nation's high-profile Private Finance Initiative (PFI) (Flinders 2005).⁹ As guarantor of essential services, government is always the supplier of last resort.

The scope and complexity of PPP projects generate other types of economic problems, most of which cannot be edited away through careful and detailed contracting design and documentation. These include delays and additional costs associated with time-consuming bidding and negotiation processes (which can be more costly than traditional public procurement) and persistent stakeholder resistance and opposition. Economic efficiency is often compromised by an attenuation of private asset value from regulatory restrictions imposed by government upon PPP operators¹⁰ and low levels of competition from the small number of

bidders who actually progress to the final stage of the PPP tournament. Finally, contractual guarantees to deliver complex projects "on time and on budget" are likely to carry built-in risk premiums since private entities are likely to anticipate potential contract-penalty costs in advance.

The economic advantage in PPP infrastructure projects does not come from privatizing the financing component per se, not even in these hugely capital-intensive projects and not even from a theoretical perspective. Regardless of whether its bonds are backed by tax-revenue general obligations or project-specific revenue streams, government typically borrows at more advantageous rates than private entities. Rather, the case for privatizing urban service delivery "necessarily turns on the efficiency and incentive effects" that flow from bundling elements of the procurement process into privatization contracting, including the financing piece (Daniels and Trebilcock 1996, 409).¹¹

Divergences between PPP theory and practice in the case of the Richmond-Airport-Vancouver (RAV) Link in British Columbia tell a cautionary story. Based on a careful and seemingly comprehensive economic and institutional analysis, including an examination of the political donations of RAV proponents, Siemiatycki (2006) concluded that the RAV PPP failed to drive technological innovation or limit cost escalations during the planning process. On the first point, the performance specifications of the RAV line, whose technology and route had been studied for more than a decade, left little room for private-sector innovation. On the second, price escalations from late-scope changes and other financial attributes of the project forced the public sector to take on additional financial risk (as has been the case with other PPP experiences). Again, the evidence is mixed. Other case experience suggests that PPPs do facilitate a transfer of technological expertise, especially in transitional and developing economies (EC 2004).

To date, the case-study evidence clearly demonstrates that the actual benefits of contracting are not automatic: they do not flow robotically from the bundling format of privatized infrastructure projects. Much the same could be said for PPP redevelopment-regeneration projects, which, in comparison, are technically less specified and programmatically more fluid during the early stages of developer selection and design and development. In both instances, public-sector players are put in the position of having to acquire or rapidly develop sophisticated institutional skills and the political acumen necessary to execute agenda-setting, contract negotiation, and policy oversight of PPP projects. These are public-sector responsibilities that no government official can formally delegate to the private sector (and expect to keep governing) with any type of PPP format for any type of public service. This mandate for policy performance includes coping with the demands for transparency,

the dilemma of confidentiality, and the politics of consultation with a wide range of stakeholders.¹²

Transparency, Confidentiality, and Accountability

Risk-sharing in public-private partnerships places a heavy emphasis on confidentiality, particularly when the business terms and conditions of an agreement are being negotiated. Hammering out the details of complex agreements requires meeting behind closed doors. The issues raised by closed-door negotiations for redevelopment deals remain unchanged since I first wrote about the accountability dilemma (Sagalyn 1990, 435):

Eventually, when local government has to give formal approval, the city council will learn about the bargains that were struck; the public-at-large may have access to the agreement through summaries deposited at libraries or reported in the press. But alternatives dropped along the way seldom come to light, and the complexity of the business deal increases the likelihood that few people will understand it well enough to raise informed objections. The city, after all, is usually trading current costs against future returns that are necessarily uncertain. Besides, the deal that reaches the members of the city council is a fully negotiated agreement that they cannot take apart and amend piece by piece; so they have the choice of accepting it as it is or becoming the spoiler of a project that has been years in the making.

For infrastructure projects the accountability dilemma embedded in confidential partnership agreements poses a distinct and intellectually challenging problem involving proprietary rights. When government entities contract for urban service delivery through long-term concessionary agreements with private entities, they are extending ownership rights and facilitating asset creation for these private-vendor entities. Drawing a comparison through a metaphor with patents,¹³ Ghere asks us to consider what such ownership could mean in the case of a large-scale municipal water operation or state corrections facility (Ghere 2001, 444):

First, partnerships may involve the sale of existing capital facilities (such as a water treatment plant) or provide for the private partner to finance and own a new facility. Second, a fee-for-service partnership might convey a fee-based revenue stream to the private firm. In such an arrangement, the private partner could be viewed as "owning" a customer base and, indeed, may exercise rate-setting authority. Third, control over operations—including assumption of a public-employee workforce—could also constitute a form of asset creation. And fourth, it is conceivable that, in certain cases (for example, with park systems, toll roads, or corrections), partnerships could arrange for real estate transactions accruing to the private firm.

Operating for profit under market conditions, a private vendor understandably wants to protect its competitive position. Acting rationally, it will condition its engagement in bidding and negotiation on some type of confidentiality agreement restricting the sharing of proprietary technical, business, financial, or legal information, if not over the term of the long-term agreement, then as long as it can and certainly for specified durations related to project-sensitive phases, including planning and contract negotiation.

This was the case with Vancouver's RAV project, where, Siemiatycki (2006) explains, the "confidentiality screen" may have kept the city manager from sharing information about the vendor consortium's controversial cut-and-cover construction method with the Vancouver city council, "even if there were parts of the plan that could be to the detriment of constituents," because that information was part of the proprietary bid. "The level of secrecy required to maintain the integrity of the private-public-partnership delivery model," he wrote, "calls into question whether the RAV-project governance structure threatened the fiduciary responsibility for the civil service or provided the necessary accountability to the elected officials who were responsible for deciding whether to approve the project" (148).¹⁴ Strict confidentiality agreements can also shield the full costs of these projects and obviously make difficult, if not impossible, the task of evaluating the actual efficiency gains from privatization contracts.

But as with other aspects of PPP implementation, procedural variations in practice shape the governance implications (see Briffault 2000). Confidentiality need not be total or coterminous with the contractual term. By limiting the scope and timing of confidentiality, greater transparency can be built into the PPP process. For example, under the procedures established by the state of Texas in 2003 authorizing PPPs through comprehensive development agreements, information submitted by bidders remains confidential until a final contract is signed with the winning bidder. More to the point, the State Department of Transportation can provide modest compensation (up to \$1 million) to losing bidders for use of intellectual property included in the proposal (Durbin Associates 2005, cited in Buxbaum and Ortiz 2007).

On the other side of the balance sheet, government brings political skill in mobilizing community support and managing opposition to the partnership table. Its unquestioned role is to manage the process of consultation among a wide range of stakeholders, however willingly, ably, and skillfully individual public managers carry it out. As a participant observer at several annual meetings of the National Council of Public-Private Partnerships, a U.S. trade group of private-vendor advocates, Ghere explains that despite rhetoric generally characterizing "grass-

Table 12.3: Governance Concerns

<i>Public Governance Norms</i>	<i>PPP Issues</i>
Accountability	Procedural fairness
Ban on conflicts of interest	Transparency
Administrative and judicial appeal	Confidentiality / proprietary rights
Disclosure	Confidentiality agreements
Rights protection	Information imbalances
Stakeholder participation	Normative regime change: Devolution / policy fragmentation Centralization / "quarantine effect"
Social equity	Social equity

roots politics as an unfortunate and troublesome deviation from enlightened rationality," private partners "cultivate a regard for government's political brokerage skills as an indispensable resource" (Ghere 2001, 446). Bassett et al. (2002) find the same sentiments in their study of the Bristol Harbourside waterfront regeneration project. Scholars of infrastructure PPPs also see the political risks of these projects as being the hardest to manage, even in comparison with the technical risks and the harder, but often manageable, financial risks (Tam and Leung 1999, cited in Kumaraswamy and Morris 2002; EC 2004).

Like many investments taken on by government, PPP projects confront a well-established list of political hazards: failure to complete, project-threatening stakeholder resistance and opposition, overgenerous economic incentives, political interference, and favoritism or corruption. Because PPPs represent a paradigm shift, political risks specific to the PPP strategy—most notably, financial failure reverting to public takeover or buyout—are potential liabilities capable of inducing backlash and pushback. This is where the processes and procedures aligned to traditional norms of governance and designed to address specific PPP issues, identified in table 12.3, can help shield the PPP strategy from a premature abandonment.

Toward an Agenda for Policy Performance

In the U.S., Europe, and Asia, experience with PPPs has brought to the fore common issues of governance, independent of performance results. PPPs represent a political challenge to the structure and values of public-sector agency. They involve difficult issues of contracting compared to the traditional model of public procurement. Public-private risk-sharing places a heavy emphasis on confidentiality and heightens the role of disclosure and oversight. Because the policy strategy lever-

ages private capital, PPPs are biased toward market-based investments and only secondarily, if at all, address social equity concerns.

On the other hand, the strong case for PPP has gathered widespread support from a number of conceptually compelling arguments, accelerating applications across the globe, and case-based results that selectively demonstrate efficiencies and innovation. As a powerful means for government to expand its capacity to ensure provision of urban services and stimulate economic productivity through investment, PPPs have become an essential instrument in the tool kit of policymakers. They are evolving. The biggest promise is still in the future as public and private players alike work through the kinks of complex risk-sharing agreements, and policy analysts mine the experiences for insights to improve efficiencies in practice.

How stakeholders respond to the governance issues of PPPs will inevitably depend on both the cultural traditions and policy context of country-specific public-private initiatives. But the mandates central to the agenda for policy performance are universal: PPP governance protocols, PPP capacity-building for public officials, and comparative research on PPP results.