

Valaguzza S. and E. Parisi, *Public Private Partnerships, Governing Common Interests*, Cheltenham-Northampton: Edward Elgar Publishing 2020, ISBN 978 1 78990 372 0, x + 256pp, hb £85.00

The use of Public-Private Partnerships (PPPs) has spread massively in our modern economy since their emergence in the 1990s with the United Kingdom's Private Financing Initiative. The characteristics and effects of PPPs across sectors and countries have been described at length within academic literature, investigating if and how PPPs contrast with other forms of public-private collaboration. A part of that literature centres on the pitfalls and successes of PPPs from an empirical and occasionally comparative standpoint.<sup>1</sup> Through worldwide case studies, it analyses factors such as partner compatibility, risk allocation, contract management, value-for-money, longevity, socio-economic outcomes and more. Yet another part of the literature delves into the theoretical and conceptual questions about what PPPs mean for law. It studies the distinctiveness of public-private partnerships, their specific logic, and the way that they challenge the much discussed public-private divide.<sup>2</sup> This book fits within this second strand of literature.

Indeed, PPPs are both sign and catalyst of the blurring of the public-private divide, which questions the role of the public and private sector in economy and society. Recent literature on the subject calls for a shift in perspective. Instead of contrasting the public and private sector, this scholarship studies what a public *and* private world entails. It concerns itself with the particular values and interests at stake in a public-private world, rather than viewing it as a mere collision of inherently opposed logics. In this light, PPPs can be researched as a historic 'mix'<sup>3</sup> of two sectors in the search of 'the best of both'.<sup>4</sup> Thus, partnerships are a particularly useful object of analysis to frame the rules, values, and forms of governance that are and can be developed in the modern economy. The book *Public Private Partnerships, Governing Common Interests* contributes to this examination.

To this end, the book sets one central task: to reconstruct a juridical definition of public-private partnerships that captures their specific features and recognizes the mutations these features create (p. xxv). To formulate this definition the authors examine what the term partnership entail for the position of public and private actors and for the relationship between them. The authors aim to isolate

<sup>1</sup> For instance, C Greven and G Hodge (eds) *The Challenge of Public-private Partnerships: Learning from International Experience* (Edward Elgar Publishing, 2005); A Akintoye, M Back and M Kumaraswamy (eds), *Public Private Partnerships – A Global Review* (Routledge, 2020).

<sup>2</sup> C Greve and G Hodge, *The Logic of Public-Private Partnerships: The Enduring Interdependency of Politics and Markets* (Edward Elgar Publishing, 2019).

<sup>3</sup> P de Vries and EB Yehoue (eds), *The Routledge companion to public-private partnerships* (Routledge, 2013); A Graeme, C Greve and AE Boardman, *International Handbook on Public-Private Partnerships* (Edward Elgar Publishing, 2012, 2nd edition).

<sup>4</sup> Y Marique, *Public-Private Partnerships and the Law: Regulation, Institutions and Community* (Edward Elgar Publishing, 2014).

what sets partnerships apart from older, still ongoing forms of procurement and contracting out. This difference, the book postulates, is that PPPs are a mechanism of participation, solidarity and innovation that fundamentally changes the way the public interest is defined and served. . Throughout seven chapters structured in two parts, the construction of this juridical definition of PPPs (part I) allows the authors to show how partnerships reshape the notion of public interest into the notion of ‘common interests’ instead (part II).

The first chapter situates PPPs in the history of public-private collaboration. In contrast to the ‘optimism’ (p. 10) that coats political vocabulary around partnerships and to the techno-economic focus of most of the relevant literature, this chapter focuses on drawing a legal and conceptual framework. It stresses the fundamental tension within public-private partnerships, reconciling the divergent interests of the public and private sphere and leading them to renounce parts of their own identity and role. The rest of the chapter lists the advantages of this fusion of public and private spheres. Finally, the authors present PPPs as an instrument for the promotion of businesses’ corporate social responsibility to create welfare in communities.

The second and third chapters take an international and local view on PPPs. Chapter 2 starts with a wider view on partnerships as a global phenomenon in connection with Sustainable Development Goals. According to the authors, PPPs should be treated principally as a creative and flexible means to produce value (sustainable development) by connecting parties (networks) and pulling together resources from and *for* the community. However, the authors assess that the current ‘normative corpus’ (p. 50) on the governance and regulation of PPPs remains insufficient to secure such a ‘people first approach’ (p. 51). The third chapter of the book follows with a local perspective. The inherent difficulty of this chapter is to set aside national legislative variation in order to arrive at a conceptual definition, while simultaneously drawing from locally anchored examples. The authors use the local perspective to support their analysis of PPPs as an instrument for ‘social cohesion, solidarity, democratic participation and social innovation’ (p. 79), rather than solely as a financial instrument. In other words, PPPs are presented as a political, strategic choice. As opposed to procurement based on delegation, the authors underline that PPPs actively involve private actors in identifying relevant social needs and fulfilling them. Hence, partnerships are an instrument for dialogue and market participation in the creation of public value and innovation, with transformative implications for the ‘physiognomy of government’ (p. 66).

Chapter 4 continues this claim with a rebuttal of common misconceptions about PPPs, which limit PPPs to a reaction to market failures. The ‘socio-economic function of the agreement’ (p. 86) indeed involves more than solely a compensation of market incapacities. Partnerships entail the co-management of the public interest and the ‘private exercise of an activity in the interest of the community’ (p. 68). PPPs must be a deliberate strategy of both partners to arrive at a shared goal. Each party’s own goals are rendered irrelevant by the

social function of the partnership, which is to provide an activity in the public interest.

The second part of the book follows the claims made in Part I with a reconstruction of a juridical definition of PPPs. Chapter 5 develops the four defining elements of a public-private partnership: (1) an agreement, (2) the involvement of at least one public and one private entity, (3) the joint management of at least one activity, and (4) the aim of satisfying a 'public interest'. This definition mechanically involves private actors in the shaping of public needs. Chapter 6 deals with the consequences of this. It first shows how the definition of public interest is tied to the existence of public authority and its legitimation. 'Public interest' is shaped in isolation by a monopolistic public power and serves as 'main clarification' for administration action (p. 124). The authors criticize the historical 'sacredness' (p. 120) thus associated with the 'self-referential' (p. 134) publicness of the public interest. They hold that the complexity of social life and the growing width of public tasks inevitably involve the private sector in the production of public value. This involvement could shape a more 'objective view of governance' (p. 128), built through consensualism and negotiation with the community. To reflect this 'objective', collaborative and composite new nature of the public interest, the authors refer to 'common interests' instead. Common interests are no longer qualified as 'public' in reference to the public sector's ownership of their definition, but are instead determined and legitimized by social relevance. Recalling literature on the commons, the authors see PPPs as a way of returning the interpretation of the public interest to the community.

In its conclusion, the book ambitiously connects its definition of PPPs to larger shifts from government to governance. The authors explain that they view PPPs as an instrument to shift the act of governing from monopoly to shared care, hereby challenging formal public sovereignty. In this view, partnerships both embody and cause mutations of traditional administrative power. The conclusion maps how these mutations affect the principles, modalities, results, and liabilities of public administration. It also proposes to complete PPPs with further collaborative behaviours, such as alliancing and collaborative contracts.

The book succeeds in exploring and conceptualizing the specificity of PPPs, its opening question. The first part of the book convincingly builds up to a second interrogation: if the essential function of PPPs is to bring together two spheres, partially renouncing their own identity, in order to jointly manage the public interest, what and who defines the public interest itself? The book answers by conceptualising the notion of 'common interests.' Given that the authors rely heavily on the terms community and participatory democracy to argue that PPPs are a novel collaborative tool, both terms are defined relatively late and in an imprecise way. Similarly, the authors appear to regularly shift the meaning of private actor and private sector to include, or not, civil society. At times, they focus on the value of involving businesses and corporate responsibility in social welfare; other times, they argue more broadly for returning the definition of

public needs to the administered community itself. The tensions that could appear between corporate actors and civil society are therefore left unaddressed. This appears for instance when the notion of ‘common interests’ is summarized as referring to both the interests of a community and of the private partners involved in PPPs (p. 136).

However, such are the side effects of offering a deep exploration of the legal essence of PPPs. Throughout the book, it becomes evident that it is impossible to define the essence of PPPs without concurrently defining the essence of public power. Drawing from history, philosophy, and literature on commons, the authors convincingly situate the shaping of the public interest at the centre of these poles. They offer the reader a rare conceptual framework that reunites within a single juridical definition both concrete elements and broader questions. The final chapter constitutes a solid overview of the complex challenges to traditional administrative power that PPPs generate. This book is a well-structured, welcome invitation for legal scholars to explore the values and relationships upon which our modern economy bases its governance. The book is recommended for researchers interested in privatization, the public-private divide, and present and future shifts in administrative law.

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