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Crucial silences: When accountability met PFI and finance capital

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ABSTRACT

During recent years, a wide spectrum of research has questioned whether public services/infrastructure procurement through private finance, as exemplified by the UK Private Finance Initiative (PFI), meets minimum standards of democratic accountability. While broadly agreeing with some of these arguments, this paper suggests that this debate is flawed on two grounds. Firstly, PFI is not about effective procurement, or even about a pragmatic choice of procurement mechanisms which can potentially compromise public involvement and input; rather it is about a process where the state creates new profit opportunities at a time when the international financial system is increasingly lacking in safe investment opportunities. Secondly, because of its primary function as investment opportunity, PFI, by its very nature, prioritises the risk-return criteria of private finance over the needs of the public sector client and its stakeholders. Using two case studies of recent PFI projects, the paper illustrates some of the mechanisms through which finance capital exercises control over the PFI procurement process. The paper concludes that recent proposals aimed at "reforming" or "democratising" PFI fail to recognise the objective constraints which this type of state-finance capital nexus imposes on political process.

1. Introduction

Over the past 20 years, there has been a global trend towards the private sector financing of infrastructure projects (Benito et al., 2008; Merna and Njiru, 1998). This process has been particularly pronounced in the UK, where by 2004 the Private Finance Initiative (PFI) accounted for as much as 13.5% of total public investment (HM Treasury, 2003). Although PFI originated during the Conservative rule, it only became prominent during New Labour's administration which, since its election in 1997, consistently emphasised its commitment to PFI based procurement (DETR, 1998; HM Treasury, 1999; HM Treasury, 2003). New Labour's commitment to PFI has entailed a broad acceptance of the central role played by financial institutions in the procurement of public facilities. Accordingly, a Treasury publication notes that:

> Typically, third party credit providers are more risk-averse than equity providers and provide the majority of the funding. The PFI approach and process thus leads banks and other financial institutions who lend to PFI projects to play an important role in ensuring that proper due diligence is performed, all important risks are identified and properly addressed and allocated to appropriate parties. They will seek to have robust and rigorous contractual undertakings from private sector participants in PFI schemes and this is one of the reasons the PFI process delivers projects on time and to budget. (HM Treasury, 2003, p. 40)

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This emphasis on the use of private finance has been paralleled by largely unrelated government agendas, for example the Best Value regime, which have sought to encourage formal accountability procedures in the public sector bodies by introducing increasing layers of monitoring mechanisms such as performance indicators, audits, efficiency targets, annual reports, etc. Paradoxically, the accountability dimension of PFI procurement has, until recently, been peripheral to the mainstream of PFI research. This can be attributed, in part, to the UK debate on PFI being highly politicised (Harding et al., 2000) with supporters emphasising that private capital was making available infrastructure and services which would have otherwise not have been affordable (Debande, 2002; Stone, 2001) and critics stressing the "faulty economics" of PFI (Broadbent et al., 2003, 2006; Froud and Shaoul, 2001; Ruane, 2000; Shaoul, 2005) and its negative impact on the quality of service delivery (Dunnigan and Pollock, 2003; Glaister, 1999; Mayston, 1999).

This paper focuses on what could be called second-generation objections to PFI which centre primarily on the governance and accountability implications of this form of procurement. Our main argument is that the way PFIs are planned, structured and financed in order to meet private sector expectations together with statutory requirements for risk transfer challenges both public sector-based and accounting-based concepts of accountability. In other words, the PFI process neither meets broad stakeholder perspectives on accountability which are based on "dialogue with relevant interest groups affected by a particular policy to reach compromise and meet expectations" (Demirag and Khadaroo, 2007, p. 5; see also, Collier, 2005; Day and Klein, 1987; Gray et al., 1997), nor fully complies with more narrow 'professional' criteria of private sector stewardship, whereby full information about the actions of the accountee are provided (Gray et al., 1996).

While relying on different concepts of accountability, second-generation accountability criticisms have tended to emphasise three main issues; namely, problems associated with the complexity of PFI transactions, the monetarisation of public services provision and its long-term impact on the state as service provider. Focusing on the complexity of the financial arrangements underpinning PFI, a study sponsored by the UK trade union UNISON and written by Gosling (2004) noted that:

> The character of PFI schemes hides their reality from public gaze. Despite the use of public money, there is a veil of secrecy and a failure of accountability cloaking PFI and PPP contracts. This has been repeatedly commented upon the House of Commons' Select committees and others. This makes it extremely urgent to determine whether Value For Money has been achieved . . .
>
> In addition to the opacity of the original PFI and PPP contract, we now have the additional obstacle to transparency and accountability of the secondary market. Investors are not only operating outside the limelight of publicity, they also see no reason why the public should be informed. (Gosling, 2004, p. 11)

Gosling's analysis is intuitively appealing. PFI finance is opaque not only because of the complexity of PFI contracts, but also PFI investors are relational block investors who have little accountability even to financial markets and their ultimate investors. Yet there is also a problem with this argument. While the financial complexity of the PFI procurement process can hamper democratic oversight, the critics of PFI have typically failed to demonstrate that pre-PFI procurement in the UK was markedly more open. Perhaps more compelling, therefore, are critiques of PFI which focus its far-reaching impact on the state-market relationship in public service provision.

Investigating the impact of the contractual commitments typical of PFI contracts on the ability of the public sector to deliver services, Froud (2003) has argued that PFI procurement is not compatible with traditional assumptions about the appropriate role of the public sector (see also Broadbent and Laughlin, 2003). Rather than exploring the issues of accountability in PFI directly, Froud has centred her analysis on the question as to how the contractual management of risks in PFI projects impacts on the ability of the state to respond flexibly to the needs of the public. In this context, Froud argues that the contractual treatment of risk in PFI undermines the traditional role of the government as risk bearer of last resort:

> Under PFI, risk is seen as the chance of incurring increased costs and is managed by the application of an approach based on inter-firm contract relations such that, in principle, risks are distributed to those best able to bear them. . . . There is little explicit recognition in this that government as a contracting party has particular characteristics that make it different from firms or individuals in terms of responsibilities, interests and modes of operation . . . This has practical appeal, as it is clearly simpler to employ a technicist approach to consider the risks from and to a particular public sector business unit or project, than to evaluate the issue of risk and uncertainty at the level of a public service. But it denies the traditional nature of government in taking responsibility for planning, organising and monitoring public service provision and responding to internal and external change. (Froud, 2003, p. 585)

Froud's analysis complicates the issues of PFI as accountability-limiting procurement approach. Implicitly Froud proposes that PFIs are not lacking in accountability because criteria such as Value For Money (VFM) are too ambiguous to protect stakeholders, but rather because the rigid contractual framework, which underpins PFI schemes and ensures their attractiveness to private capital, will make it difficult for the state to meet its role as service provider of last resort.

Relying on a structurally more rigorous analysis of the post-modern capitalist state, Kerr (1998) has argued that the rhetoric of PFI on improving efficiency and public services has come to mask the active depoliticisation of state-sponsored service provision. According to Kerr this depolitisation is part of an effort of the state to subjugate the service provision labour proves to the rule of money:

> In this way, the PFI marks a fundamental transformation of traditional public sector procurement methods, one in which the traditional and clear distinction between public and private activities and spaces is becoming obscured.