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## **Social economy partnerships and the public/private cleavages**

JOXERRAMON BENGOETXEA\*

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### **Abstract**

Public/Private Partnerships can be seen as one particular topos where the divide between the public domain, all levels of the Public Administration and the private initiative and private property is turned into a joint venture rather than a confrontation or a cleavage. Some of the possible combinations of public and private and where public/private partnerships might fit are displayed analytically. The importance of political theory or ideology in conceiving the relationships between 'public' and 'private', and the conceptions of a market economy as opposed to a social market economy cannot be exaggerated enough, but equally important are the legal or regulatory framework and the underlying dominant legal culture and legal principles, and of course the economic and financial situation. Public/private partnerships thrive in some conditions, but seem to wane in others, and the current predicament is not favourable, taking into account that only the regulatory framework is supportive of these ventures.

### **Key words**

Public/Private Partnerships; social economy; public administration; private property.

### **Resumen**

Los partenariados público-privados se pueden entender como un espacio particular, en el que el sector público, todos los niveles de la administración pública, y la iniciativa privada y la propiedad privada, abordan una empresa conjunta, en lugar de mantener posturas contrapuestas. Se muestran algunas de las posibles combinaciones del sector público y privado, en las que tendrían cabida los partenariados público-privados. Es patente la importancia de la teoría o la ideología política para entender las relaciones entre lo público y lo privado, y las concepciones de una economía de mercado frente a una economía social, pero

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\* Ph.D. in Law, University of Edinburgh; Profesor titular Universidad del País Vasco-Euskal Herriko Unibertsitatea (UPV/EHU). Director of EHUgune. Coordinator for the UPV/EHU of the Oñati International Master in Sociology of Law and the Ph D Program in Sociology of Law. Member of the Academic Board of the Renato Treves International Ph D in Law and Society. Formerly Scientific Director of the Oñati Institute, Référendaire of the European Court of Justice and Deputy Minister for Labor and Employment in the Basque Government. Currently visiting professor at Stanford University (Spring 2012). UPV / EHU. Facultad de Derecho. Paseo Manuel de Lardizabal, 2. 20009 Donostia-San Sebastián (Gipuzkoa) Spain. [joxerramon.bengoetxea@ehu.es](mailto:joxerramon.bengoetxea@ehu.es)

tampoco se puede negar la importancia del marco legal o reglamentario y la cultura jurídica dominante subyacente, y los principios jurídicos, sin olvidar la situación económica y financiera. Los partenariados público-privados prosperan en algunas condiciones, pero no lo hacen siempre, y la situación económica actual no es favorable, pues sólo el marco regulatorio apoya estas iniciativas.

**Palabras clave**

Partenariados público-privados; economía social; administración pública; propiedad privada.

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## 1. Introduction

Public/Private Partnerships can be seen as one particular domain where the divide between the public domain, all levels of the Public Administration and the private initiative and private property is turned into a joint venture rather than a confrontation or a cleavage. The table shows some of the possible combinations of public and private and shows where public/private partnerships might fit.

Matrix of the relation between public and private:

PUBLIC >	<i>versus</i>	PRIVATE	= monopolies
PUBLIC //	<i>cum</i>	PRIVATE	= PPP (concessions)
PRIVATE >	<i>versus</i>	PUBLIC	= privatization
PRIVATE //	<i>cum</i>	PUBLIC	= PPP (collabs)
PUBLIC	<i>versus</i>	PUBLIC	= competence, regulatory conflicts - regulatory competition
PUBLIC //	<i>cum</i>	PUBLIC	= New Gov, MLG subsidiarity and federalism
PRIVATE	<i>versus</i>	PRIVATE	= competition
PRIVATE //	<i>cum</i>	PRIVATE	= coop / joint ventures

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The importance of political theory or ideology in conceiving the relationships between public and private, and the conceptions of a market economy as opposed to a social market economy cannot be exaggerated enough, but equally important are the legal or regulatory framework and the underlying dominant legal culture and legal principles, and of course the economic and financial situation. Public/private partnerships thrive in some conditions, but seem to wane in others, and the current predicament is not favourable. Only the regulatory framework is supportive of these ventures.

The contribution to this volume by Constanze Semmelmann (2012) is a very interesting exploration into this theoretical question. In this sense, whether the law is oriented towards private property and the free market or towards ordo-liberalism and fair conditions of competition, or towards state intervention in the economy to ensure the provision of basic infrastructures or towards state planning of the economy will have different impact on the understanding of the public/private divide. Equally important, perhaps even more so, are the economic and financial conditions – the state of the private and public access to funds that allow economic operators to make investments in projects. The current European crisis obviously has an enormous impact on conceptions and theories of the public and private divide, amongst other implications. In this brief introduction the general effects of this crisis are spelled out and related to some of the contributions that were presented at the special stream on Public/Private Partnerships at the Oñati Conference on the Social Economy, and which are published in this volume (Part One). In Part Two, I attempt an explanation of how the current crisis affects the instruments or vehicles normally referred to with the expression Public/Private Partnerships also relating to the contributions in this volume.

## 2. The current European crisis

The G-8 leaders gather at Camp David as I write this introduction (18 May 2012) and "Eurocrisis" is the main point on their Agenda. This crisis is an unprecedented mix of public debt crisis, banking crisis, zero growth, mortgage based private debt crisis, high unemployment, failed institutional design and credibility/confidence crisis. Indeed, recent events in Europe give us an impression of social disintegration, political disorientation or lack of vision, institutional fatigue, even a concept failure. What might have started off as a financial crisis now risks sliding into dangerous widespread populist, totalitarian and anti-immigrant positions and provoking "technocratic" and market interferences into politics. Ireland, Hungary

and the so-called PIGS are in recession. Portugal and Ireland have been intervened or rescued. Although Italy and Spain are, arguably, too big to rescue, for their respectively huge public and private debts, Spain's financial sector is to be rescued by the Eurogroup. The bankruptcy of Greece, the austerity and restructuring measures it needs first to decide and then to implement if it is to avoid "Grexit" (euro-exit), have already transformed domestic politics: the two mainstream parties have jointly lost 40% of the votes and failed to agree on an emergency government, the neo-nazi and xenophobic Golden Dawn- got 21 seats (7% of the vote) in the one-day parliament that called for new elections for June 17, a disguised referendum on the euro. Whatever the outcome, the EU Treaties do not contemplate any way out of the euro! Hungary is a special case altogether: leaving aside the hard-line nationalist majority supporting the Viktor Orban government, there is a strong "anti gypsy" *Movement for a Better Hungary* (17% of the vote) with a "paramilitary" *Guard*; and the Council of Europe's Venice Commission "for Democracy Through Law" has voiced concerns on the Hungarian constitutional process and outcome<sup>1</sup>.

In Spain, the official unemployment figures (25%, and 50% for the young) are not yet silencing the austerity mantra of the Government: "cut or be cut"<sup>2</sup>. This is presented as an imposition of the global markets but the Popular Party did clearly win the Nov-2011 elections in all of Spain except in Asturias, Basque Country, and Catalonia. An unelected President of the Government Council, Mario Monti, was imposed on Italy to try to decide and implement the "necessary" reforms. In that case, the signs were not of despair for the loss of democratic representation but rather of relief to see the disgraced "*cavaliere*" finally go. In France, the *Front National* had 6.5 million voters in the first round of the Spring-2012 presidential elections and the previous government tabled a proposal to rethink the Schengen system, and enable the re-establishment of internal frontiers on an ad hoc basis<sup>3</sup>. The European Commission does not seem strong enough to stop this downfall. The day after the first round of French Presidency elections, the *Freedom Party* ceased to support the current austerity-bent Dutch government and made it fall. These are only some of the political outcomes of austerity: "The Crisis of European Democracy"<sup>4</sup>.

An apparent insensibility of Germany, insisting on cuts and reforms before the ECB can be activated, leave aside the issuing of Eurobonds which even the OECD supports, added to selfish attitudes of other EU Member States, aiming to protect their financial industries at all costs and opposing measures like the tax on financial transactions, leads one to think that something more than a clash of economic analyses –Keynesianism v Chicago school– is going on. The *eurocrisis* is eroding one feature Europeans felt most proud of until a few years ago: its diverse social safety nets (welfare, health, education, inclusion policies). The street protests in so many cities (15-M in all of Spain; Athens; throughout the UK) are a symptom of these crises and social imbalances and of the lack of prospects for a young generation better educated than any before. The erosion of the social safety nets can be seen as both a result and a cause of the austerity culture but it does seem that the public sphere shrinks when it comes to social spending and expands when

<sup>1</sup> Opinions no. 614/2011 (25-26 March 2011) and no. 621/2011 (17-18 June 2011)

<sup>2</sup> According to UNICEF, 714.000 homes have all their adult members unemployed. 2.2 million children live below the poverty threshold (mostly in immigrant families and of young couples). The number of homes with no income increased by 120% between 2007 and 2010 ('Report on Spain 2012 – 2013').

<sup>3</sup> According to the evaluation of the Schengen system made by the Commission in mid-May 2012, in the aftermath of the Arab spring revolutions of 2011 and with the on-going crisis in Syria, around 30 000 unlawful entries have been detected in the EU external frontiers in 2011, 75 % of them on the Greek-Turkish border (Rhodope area). It is not clear how Greece might be expected to finance the policing of this corridor in a bankruptcy situation.

<sup>4</sup> This is the title of Amartya Sen's article in *The New York Times*, 22 May 2012 where the Nobel laureate holds: "Perhaps the most troubling aspect of Europe's current malaise is the replacement of democratic commitments by financial dictates — from leaders of the European Union and the European Central Bank, and indirectly from credit-rating agencies, whose judgments have been notoriously unsound."

it comes to financial interventions and rescuing the banks. This leaves the public Treasury with less available funds for investment or for social benefits. It also leaves the public administrations with less capacity to intervene in the economy, lest it places state bonds at an ever increasing rate of interest and increases its public debt. The public money that has been injected into private banks does not necessarily revert to public interest investment nor to new loans to private initiative for undertakings and ventures that generate growth. It simply goes to clear bank debt, and generates no growth to the public. As a result, fewer revenues are available to the public budgets, and new cuts or restrictions are decided. In this climate, public/private initiatives are really limited to state interventions to rescue banks. This is paradoxical. Even more so when some of these financial organisations have engaged in high-risk behaviour.

Social solidarity is at stake and the locus where social solidarity is debated, decided and arranged – local or European – and where social inclusion is promoted, in other words the ‘social constitution’<sup>5</sup> becomes a key factor in determining the forum of politics and legitimacy; ultimately of nation-building and of (de)construction of the demos. The two dimensions of the crisis, the financial-economic crisis and the rise of populism, the social-political multicultural crisis interact in different ways that need to be studied. As an example, the new Council of Europe Commissioner for Human Rights Nils Muiznieks has called on Contracting States to consult proposed austerity measures with their citizens, and the occupy movements, and with civil society in order to find ways out of the crisis. He considered it is necessary to fight for the fundamental rights of most vulnerable groups like youth, older people or homosexuals and insisted on the need to ensure immigrants’ rights to education and nationality<sup>6</sup>.

The political crisis can have real impact on the public/private divide. The decision whether Greece will comply with the “suicidal” conditions imposed by the international lenders in order to stay in the Euro and be able to pay its debt depends on political decisions. The market operators make decisions that affect the economy, to trust or not to trust a country’s economy by buying debt at a lower or higher rate, but it is the political institutions that decide how public budgets are drawn up and whither investments go. The political decisions are crucial, and at the moment, the politicians in power are generating this disbelief in the public sector, seeing it as the source of the malfunctioning of the economy. No private initiative or growth is compensating for the recession though. Private investment is simply fading away. Will it therefore also be the end of the ideological and political conditions necessary to support public/private partnerships?

Only the legal instruments are left; they have not really changed, they were developed at a time when European economy was prospering and growing and public and private sectors could meet to experiment joint ventures in all sorts of areas. These legal instruments have been presented and explained in this volume by Estibalitz Moreno (2012) in her contribution. Furthermore, these legal instruments, mostly in the form of EU harmonising directives on public contracts, as interpreted and (un)systematised by the Court of Justice – *Altmark* - and special rules for the General Services of Special Public Interest were accompanied by especial modes of governance, brilliantly analysed by Fernando Losada (2012) in his contribution to this volume. The UK developed its Private Finance Initiative; Ireland was a strong supporter of the new joint vehicles for financing and managing, so was Spain... until the crisis came.

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<sup>5</sup> The term is forcefully contrasted with the economic, ordo-liberal, constitution by Christian Joerges (2007).

<sup>6</sup> Source: Strasbourg press Conference, Efe News Agency, 25 May 2012

### 3. Public/private partnerships

In the Basque Country, and especially in the historical territory of Gipuzkoa, this new trend gave rise to an ambitious project or platform which was itself going to become a PPP between the regional bank Kutxa, the Gipuzkoa regional government, the San Sebastian city council, the Chamber of Commerce, and the provincial entrepreneurs association and one major corporation, Mondragon. The aim of this platform, Gipuzkoa Aurrera, was to look for joint ventures between the partners and create a sort of think tank on the social and economic situation of the province. It adopted the legal personality of a trust (Fundación), which was short lived because the new government, coming from a completely different ideological outlook, and seeing that the economic and financial situation were not favourable, decided to discontinue the project and the platform. Since the rest of the partners were not really contributing financially, the project ended. In his contribution to this volume in Basque, Bengoetxea (2012) explains the story of this platform and the different positions around it, and develops the economic models along the Public/Private divide that explained those positions.

Together with the setting up of Gipuzkoa Aurrera, the provincial government of Gipuzkoa decided to fund research on PPPs generally and the University of the Basque Country was awarded a research project to enquire into best practice on PPPs around the world and locally. A research team was set up, and the major results of this research, with the exception of the best practice in the USA and the Anglophone world which were only carried out for the research report, are presented in this contribution. The main hypothesis of the research project was that PPPs in the larger infrastructure (hard in construction projects or soft in new technologies projects) requiring vast amounts of public and private investment had probably had their day, given the very drastic reductions of public budgets, and that it was therefore much more interesting to focus on smaller, alternative projects that, we thought, might ultimately be supported also by ideologically critical public officials and politicians. The areas we decided to explore were social assistance to third or older age persons, a matter which was carried out by Iker Nabaskues (2012) for our project, but which can be contrasted with a different outlook by Arrieta and Etxezarreta (2012), also in this volume. Similarly, we thought it would be interesting to analyse the potential of PPPs in the field of alternatives to prison sentence in partnerships. The area was explored by Alison Hogg (2012) in her contribution to the volume. The field of integration of immigrants and new concepts of citizenship was analysed by Iker Barbero (2012) whose contribution to this volume presents interesting initiatives and also brings in new theoretical outlooks. It can be contrasted in an interesting way with the PPPs developed in the field of aid to development in Latin America, critically dissected into its ideological elements by Pedro Ramiro (2012), a contributor to the Conference but who was not a member of the research team. Last but not least, the remaining aspect of the research was equally important; indeed, as Virginia Senosiain (2012) shows the initiatives carried out in the field of renewable energies in the province of Gipuzkoa show how public and private initiatives can meet to very innovative projects, and area which we hope will be continued in the future given our absolute, and by all means excessive, dependency on fossil energy sources, and the economies of scale and new opportunities for economic growth and new jobs that could follow from the renewable energies if they meet the necessary regulatory push and economic support as start ups.

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