

## **Brief Comments On Public-Private Cooperation**

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### **Abstract**

*The formation of Public-Private Partnerships (PPPs) in Brazil took place after the approval of Law 11.079/04. Since then, this new arrangement of shared public management has been causing discussions about its applicability and effectiveness. The objective of this work is to investigate how this new concept of partnerships contributes to the evolution of Brazilian public management, and to the debureaucratization of public services and the effectiveness of shared management, through a descriptive, documentary and bibliographic qualitative research. In the research, it was found that the adoption of PPPs has become a good alternative for countries like Brazil, as it allows for the orientation of investment and management for various programs and projects, as well as freeing up resources to carry out other interests of society. However, this type of innovative modality still needs a series of adjustments, especially in relation to the form of contracting and the regulation mechanisms.*

**Keyword:** *Public Services; Public Management; Shared Public Management; Public-Private Partnerships; Public administration.*

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### **I. Introduction**

In the view of the author Paludo (2012, p. 343), it is understood that public management is a position of planning and organization of public areas. The function of management is to organize, direct, plan, lead, negotiate, coordinate and control the activities of the administration, whether public or private. The main aspects that differentiate public management from private management are related to the public interest, equal treatment and compliance with democratic values, as they exercise the sovereign power of the State and the interest of the community must prevail over the interest of groups or the individual.

Our work is justified by the relevance of the theme of the partnership between public power and private initiative, since there is an intense relationship between both. Public-private partnerships are increasingly present in the public sphere and society needs to know how this power can offer necessary services to the population.

The methodology of the present study was a descriptive literature review. The instrument for data collection were scientific articles related to the theme of public and private management, through generative and documentary research on Google Scholar.

The purpose of research is to "solve problems and solve doubts, through the use of scientific procedures" (BARROS; LEHFELD, 2000a, p. 14) and based on questions formulated in relation to points or facts that remain obscure and need plausible explanations and answers that will elucidate them. For this, there are several types of research that provide the collection of data on what we want to investigate:

The objective of the research was to seek to comment on what the Public-Private Partnership (PPP) is and its developments in public management, as an important action and at the same time a tool, to efficiently ensure the provision of some public services by the private sector. As well as, to bring the concept applied to the public-private partnership (PPP), contextualizing its historicity and evolution; deepen the research by highlighting the types of PPP, their aspects and operationalization in Brazil, based on what has already been conceptualized and correlate the applicability of the PPP to the existing public management model in Brazil, highlighting what works and the obstacles to be overcome.

This article is divided first into the introduction and then the theoretical framework, where we talk about the PPP, trying to unveil its unfolding, then we made the methodology and the topic of results and discussions where we bring our view on everything that was discussed, to conclude, we made our considerations about the research and the bibliography used.

## **II. Material And Methods**

The methodology of the present study was a bibliographic and descriptive review. The instrument for data collection were scientific articles related to the theme of public and private management, through generative and documentary research on Google Scholar.

Qualitative research answers very particular questions. In the social sciences, it is concerned with a level of reality that cannot be quantified, that is, it works with a universe of meanings.

The first step was to read the proposed guidelines, more than once if necessary, and listen to the explanations online or in the classroom to fully understand what the teacher expects from that group work

After the conversation about it, we divided the parts of the work and talked to each other about the performance preferences and responsibilities of the members at each stage of the process

## **III. Result**

The formation of Public-Private Partnerships (PPPs) in Brazil took place after the approval of Law 11.079/04. Since then, this new arrangement of shared public management has been causing discussions about its applicability and effectiveness, and for the debureaucratization of public services and the effectiveness of shared management, through a descriptive qualitative and bibliographic research. In the research, it was found that the adoption of PPPs has become a good alternative for countries like Brazil, as it allows for the orientation of investment and management for various programs and projects, as well as freeing up resources to carry out other interests of society. However, this type of innovative modality still needs a series of adjustments, especially in relation to the form of contracting and the regulation mechanisms.

### *Brief considerations on Public-Private Partnerships (PPP)*

Our investigation on the theme of Public-Private Partnerships (PPP) begins with the basic concepts of this modality and, throughout the writing, we bring its applicability in administrative management. In the article entitled: *Partnerships Between the Public Sector and the Private Non-Profit Sector: An Integrative Review*, presented at the *XX USP International Conference in Accounting (2020)*, the authors Varela; Zucchi; Martins; Sasso informed that although the cooperation between the public and private sectors is present in other historical moments, it was the financial crisis in the 80s and 90s that marked the beginning of the various socioeconomic arrangements for the PPP to expand in the country. However, for these authors, the most elaborate concepts about this partnership are still scarce and superficial and are generally associated with other theories:

In the literature, definitions of PPPs are rare and, when they exist, they are presented much more to delimit the object of study than to effectively establish its elements and connections so that social phenomena are clearly identified. This difficulty may arise from the diversity of the entities that make up the private sector and, consequently, from the relationships that are established with it. In addition, depending on the number of actors involved in the relationship, the complexity becomes greater (Varela; Zucchi; Martins; Sasso, 2020, p. 15)

The authors Rocha; Ribeiro (2022, p. 23), recall that the economic crisis became known as the Lost Decade of the Brazilian Economy and with-it public goods and infrastructure were scrapped, investments in the public sector fell drastically. The crisis not only affected the public entity, but also the private sector, which did not have clear strategies to face the problem. It was in the mid-1990s that the public sector began to outline a new management model, with the expectation of greater participation of the private sector through Law No. 8,987/1995 – known as the Concessions Law and the privatization of electricity, telecommunication and the concession of some highways, however, the authors point out that concessions and privatizations only managed to stabilize the economy.

We understand that, from these events, Brazil took an important step to reaffirm the public-private modality, gaining more strength in the 2000s with the approval of important legal frameworks, such as Law No. 11,079/2004 (Public-Private Partnership Law) and, recently, the new bidding law.

Finally, despite the precariousness of more refined concepts that define this partnership, it can be easily perceived in practice when we think about the offer of services such as public transport, adoption of green areas by local commerce, garbage collection concession, airport, etc. and contribute to the production of goods and provision of better-quality services, in addition to being an excellent job-generating instrument.

*Types of PPPs, their aspects and operationalization in Brazil*

With evolution in the economic scenario, Pereira (1998) points out that in public management, whatever the sphere, this partnership brought benefits by transferring to the private sector some services that are not exclusive to the state. Silva (2022) agrees with this thinking and emphasizes that the State has a fundamental role in the growth of the economy and should be seen as: "a fundamental partner of the private sector, in general, bolder and willing to take risks that companies do not assume". (Silva, 2022, p. 13).

When we talk about public-private partnerships, we find two types: sponsored and administrative, which work in a hybrid way. Williamson (2012, p. 61) clarifies that: "the hybrid nature results from the active participation of government agencies and private companies in financial structuring arrangements, investment and management of infrastructure equipment and services", that is, this is what we mentioned earlier about the arrangements after the economic crisis, which were constituted with the purpose of enabling more complex contracts that would have a high cost for the public coffers and would require support of specialized professionals, with refined technique, which we do not always find in public administration.

Before further specifying the two types of PPPs, it is worth noting that public-private partnership and common concession should not be confused, since in the latter the concessionaire's remuneration comes exclusively from the tariffs charged directly to users; in PPPs, the Public Administration enters with the payment of consideration for the service, with or without charging a fee from users.

After researching the institutional portal of the Social Service of Industry - SESI (online, 2023), in the state of Goiás, we bring the simple and concise concepts of the two types of PPPs, found in the Brazilian Public Administration. The first is the Sponsored Public-Private Partnership, in which there is a type of concession of services or public works, along the lines of Law No. 8,987, of February 13, 1995, which, in addition to the collection of the user's fare, also involves the receipt of pecuniary consideration from the government entity. The second is the Administrative Public-Private Partnership, in which the contract deals with the provision of services, or supply of goods and facilities, and the direct or indirect user is the Public Administration itself. This type is governed by Law No. 11,079 of 2004, concomitant with article 31 of Law No. 9,074 of 1995.

Authors such as Lono (1990) and Pimenta (1995) consider this modality of government management that implies the total or partial transfer of state public action to civil society agents as one of the various forms of decentralization, conceived as the transfer of functions from inside to outside public bureaucratic organizations, that is, from within the structure of the State to society. whether the society is organized in private companies or in non-profit entities, such as class or community associations.

As for the operationalization of the modality, we bring the quote from Martins (1994, on line):

[...] concessions of public works and services, in areas such as transport, communication or energy [...] subject to the general rules of bidding and contracting, which bind the parties by means of well-defined obligations and rights; as well as there are also cases of permission in which there is a unilateral, discretionary and precarious delegation of the provision of public utility to legal entities governed by private law.

[...] financing of projects, as well as the new types of partnerships that are currently entered into between the State and the private sector, when the latter rents and exploits state assets, even committing to bear reinvestment obligations; or even the type of partnership known as outsourcing, in which certain activities of a public entity are discontinued and transferred to private suppliers, while maintaining state control over the quantities, quality and price of the goods and services supplied.

In addition to these examples, Savas (1990) defends privatization, which he defines as "the act of reducing the role of the government, or of giving greater importance to the private sector, in an activity or in the ownership of goods". This author, in the work *Privatization: the key to a better government (1987)*, examines this alternative arrangement of providing public goods and services to society as a kind of public-private partnership. Donahue (1992) agrees with the definition brought by Savas, completing the concept with what he calls the delegation of public responsibilities to private organizations, even attesting to the incompetence of the entity as a provider of certain services or supply of goods.

*Applicability of PPPs and risk sharing*

In this topic, we will conclude our specific objectives by bringing Osborne's approach, which reports on the application of PPPs in the United States of America and some important principles; we bring the vision of the application of the public-private partnership in the health area, by Mânica and, finally, we will talk about the sharing of risks, by Guimarães.

In the best seller *Reinventing Government*, Osborne (1994) envisions a new paradigm for the performance of governments that goes beyond the ideological sphere of the binomial liberalism/conservatism and privatization/nationalization, in which the author calls the government an entrepreneurial subject. From the panorama of changes that occurred in American local and state governments, this author listed some principles that underlie the public-private model of government action.

Most entrepreneurial governments promote competition among those who provide services to the public. They empower citizens by transferring control of these activities from the bureaucracy to the community. They measure the performance of their agencies, focusing not only on the factors used, inputs, but also on results. They are guided by their objectives, their mission, rather than by rules and regulations. They redefine their users as customers, offering them choices between schools, training programs, types of housing. They avoid the emergence of problems, limiting themselves to offering services as a correction or remedy.

They invest their energies in the production of resources, concentrating simply on expenses. They decentralize authority, promoting management with participation. They prefer market mechanisms to bureaucratic solutions. They focus not only on the provision of services to the public, but also on the catalysis of all sectors – public, private and voluntary – for joint action aimed at solving the problems of the community (Osborne, 1994).

These principles can also be observed in the modality of partnership existing in Brazil, and Osborne (1994) cites as examples the contracting in various areas such as security, health, education, construction and transportation.

The author Mânica (2022) brings as an example of PPP the existing contracts in the Brazilian health area and emphasizes that, from a legal point of view, there are great challenges due to the multiplicity of legal ties in this partnership and also due to the difficulty of defining the fundamental right to health in a unique way. For him, health is defined as: "a dynamic state of the human organism that results from the momentary interaction of internal and external factors. The state of health does not correspond to the mere absence of disease, but to the "complete condition of physical, mental and social well-being of the human being" (Mânica, 2022, online). The above concept was presented by the World Health Organization in 1946 and adopted by all, so that health should not be understood only as an individual right that cannot be violated by the government, but also as a social right, in which everyone should have access to actions and services that promote health protection and recovery.

Mânica (2022) highlights that, in Brazil, the right to health can vary according to each legal system (criminal, administrative, constitutional, or civil), as we can see that in Brazil, "health care" corresponds to the set of environmental interventions and policies external to the health sector, which bring together all the external factors that affect people's health, such as those related to macroeconomic policies, employment, housing, education, leisure and food quality. "Health care" refers specifically to the provision of individual or collective care in hospitals, outpatient or home environments to the health of citizens. Thus, while "health care" is operationalized by a series of state activities, such as the exercise of police power, promotion and regulation, "health care" is materialized through the provision of public services, technically called "health care services."

In this sense, we realize that when it comes to PPPs in the health area, the public entity faces a series of minutiae in the process, starting with the definition of the terminologies used in the contracting between the parties. The author highlights that, in the strict sense: "health partnerships correspond to the agreements entered into between the Government and the private sector with a view to providing health care services to citizens (health care)" (Mânica, 2022).

In view of the specificities of this modality and after seeing Mânica's considerations, we will end our topic by talking about the risk sharing of public-private partnerships, before the legal system. For Guimarães (2022), this topic is broad and even complex, as the distribution of risks depends on a connection between law and economics: "it is above all in compliance with the principle of efficiency that the risks in the PPP contract are cataloged and distributed or shared by the parties, in an environment of strong dialogue between law and economics." (Guimarães, 2022).

The author points out that risk sharing is one of the fundamental topics to be discussed in long-term contracts, as is the case with concessions that can last for up to 35 years, including contract renewal. In addition, these contracts are subject to variations and depend on an adequate distribution of cost/benefit and contractual risks, so that they can be efficient. Guimarães (2022) informs that: "the rationality of this sharing is what will allow generating more efficient cost structures and providing greater contractual stability", that is, assessing risks and managing them legally, may require a solid contractual structure, which complies with the legal principles of administration. To this end, Law 11,079/2004, cited by Guimarães (2022), brings the theme of risk allocation in contracts arising from PPPs, establishing *the objective distribution of risks between the parties* (article 4, item VI), concomitant with article 5, item III: *"the sharing of risks between the parties, including those related to fortuitous events, force majeure, prince's fact and extraordinary economic law"*.

Therefore, Guimarães (2022) considers that the allocation of risks will depend on concrete

circumstances, excluding abstract texts. The author draws attention to the fact that some risks, exceptionally, must be borne by the public partner, such as: "inflationary risk (partially transferred to the user, in the case of a sponsored concession); the risk of unilateral change of the object (by the granting authority) and the risk of creating new legal charges or modification in the tax rate (except for the modification in income taxes) that impact the costs of the PPP". With this explanation, we realize that the legislation established the responsibilities between the parties, but it is necessary to have coherence and rationality for the contracting to produce positive effects.

#### **IV. Conclusion**

The present work sought to study and conceptualize how PPPs occur, their impacts on the evolution of Brazilian public management and also their debureaucratization. We also brought authors who highlight the challenges of public-private partnerships in the Brazilian Public Administration.

As Araújo (2019) teaches us, public-private partnerships have proven to be a successful attempt by the state to seek greater attractiveness of private sector resources, in those areas that are still deficient in public investments, which can generate improvements and reinforce management, execution, financing and provision of quality services.

It should also be noted that these partnerships have become more and more an important tool in the provision of public services and this was clear from the examples we brought in the topics of our theoretical review. Also, as an example of efficient partnership, Cardoso; Marques (2014) recall that for the development and operation of infrastructure in large public works, it is more advantageous for the private partner to be able to perform such services, in addition to almost always having more technique and better qualified professionals.

Finally, our research made important comments that justified this theme, as the public power has limitations that the private sector can help and thus bring benefits to the population. Our general objective was achieved and we were able to bring important clarifications about PPPs, as a tool that boosts the provision of services.

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