In Whyte, D. (ed.) *How Corrupt is Britain?* London: Pluto. pp124-34.

9

Politics, Government and Corruption: The Case of the Private Finance Initiative

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# Introduction

In this chapter we trace some of the ways in which the United Kingdom’s private finance initiative (PFI) – a species of ‘public private partnership’ (PPP) whose operations and effects we explore in what follows – can be treated as an example of ‘corruption’.1 Through an examination of associations between practice, process and context in the implementation of PFI, we focus on the role of the state and new forms of governmental arrangement in establishing contexts in which corruption, understood in different ways, can flourish.

As David Whyte points out in his Introduction to this book, corruption is too often cast in either/or binaries predicated on the formal separation of private and public spheres. This invites analyses in which state and market are pitted against one another. As we shall show, such analyses can be misleading. The rise of new governmental arrangements like PFI significantly destabilise such distinctions. Arrangements like PFI work to incorporate market actors in the circuits of government, making them public authorities by proxy which undertake the functions of the state at the behest of the state but on the basis of restricted, one-sided and corrupt/ible contractual agreements established on commercial terms and shielded from public view.2 These arrangements exhibit a particular kind of logic, which Lynch calls the ‘logic of sleaze’ – opening up room for ‘transgressive’ and ‘scandalous’ activities while simultaneously working to close down and undermine attempts to bring those transgressions and scandals to light.3 We argue, therefore, that if we are to analyse corruption, we must understand those aspects of government which make it possible. The example of PFI – just one of the many state-market hybrids which are increasingly coming to define the governmental landscape in the United Kingdom and elsewhere – will help us to arrive at a clearer view of this ‘logic of sleaze’ at work.

After providing some background on PFI, sketching its scale and scope, we outline three senses in which PFI can be thought of as ‘corrupt’. First, we look at the PFI commissioning process as a site of corrupt activity. Second, we look at PFI as a corruption of equity – that is, as a site where relations of equity are inverted through the flow of funds from the public to private and from poor to rich. And, third, we look at PFI as a corruption of practices of accountability – that is, a site where political responsibility can be obscured and therefore denied, and where even minimal democratic controls and oversight mechanisms are being eroded (see also Chapter 1). The connecting thread is how PFI works to displace and dislocate accountability, itself a deliberate, sought-for outcome of the policy and the wider political strategies which inform it as well as many other recent governmental innovations. If, then, PFI is corrupt, it is a form of corruption that has been nurtured and allowed to spread for political purposes.

# PFI: Background, Scale and Scope

‘We do not believe that politicians and officials should take key [public] investment decisions.’4

PFI is a species of public–private partnership that has become the primary mechanism for capital investment – that is, infrastructure projects – in the public sector in the United Kinmgdom. PFI has its origins in the Thatcher and Major governments of the late 1980s, but was extended and amplified under the Blair–Brown administrations, which, where it became a cornerstone of public policy.5 A way of leveraging funding for infrastructure projects, PFI takes capital investment off the public sector balance sheet via private sector financing. Under PFI, capital investment no longer counts as borrowing, and so debt, but as current expenditure (that is, payments) instead. This (artificially) improves public sector borrowing figures and allows government to build new roads, schools, and hospitals and so on while maintaining a reputation for fiscal constraint. A nebulous, suspect accounting device, PFI has proven enduringly controversial, but despite sustained attacks by the Liberal Democrats and Conservatives as well as the Scottish National Party when in opposition, all three parties have continued the policy when in office, signing off new Private Finance 2 (PF2) deals it is claimed, will not repeat the mistakes of those past ‘PF1’ initiatives they once so vehemently decried. PFI, in political terms, has thus been reaffirmed as ‘the only game in town’6 when it comes to public infrastructure investment.

In her analysis of PFI, Professor Jean Shaoul of Manchester University summarises the broad rules of the ‘game’ as follows:

Under PFI [and now PF2], the private sector designs, builds and finances much needed new hospitals, schools, roads, prisons and other social and public infrastructure and provides the ancillary, but not the ‘core’ professional, services for 20–35 years, in return for an annual fee that covers both the capital cost of the asset and service delivery. In effect, the public authorities lease the infrastructure required for the delivery of public services from the private sector.7

PFI is thus akin to a multi-billion-pound hire-purchase scheme with servicing arrangements thrown in, one that comes with all the drawbacks of raised costs but multiplied by its massive scale. Concentrated in health, education and transport but employed in all areas of government local and national, the decades-long lifespans and ring-fenced funding status of these contractual commitments means they will remain an enduring feature of the policy and indeed physical landscape for some time to come.

Based on figures released to the *Guardian*,8 by 2012, 719 major infrastructure projects had been delivered via PFI, a large number partly attributable to the fact that, at its peak in 2009, PFI projects accounted for an estimated 70 per cent of new builds in health and 60 per cent in education. These 719 projects had a stated capital value of £55 billion. While total repayment costs are difficult to quantify, the limited public domain data available showed these would result in direct repayments alone of £301 billion over 50 years – six times the capital value. Existing direct repayment costs will peak in 2017–18 at £10.1 billion, with a further 39 projects, with a capital value of £5.6 billion, in the pipeline at the time these figures were released.

As an illustration of the cost inflations associated with many PFI schemes, the proposed Calderdale Royal Hospital PFI in Yorkshire, for instance, has a capital value of £65 million but will result in direct repayments of £773  million over the lifetime of project. The recent Mersey Gateway Bridge project, to take another example, which will result in a second bridge across the Mersey at Runcorn, has a capital value of £600 million but associated long-term costs of £2 billion.9 Operating with additional financing from Halton Council, much of the cost is to be recovered from bridge users – that is, the same taxpayers footing the bill – through tolls. Originally projected to be comparable to the tolls on the Mersey Tunnels (currently £1.70), it is now thought the tolls could cost £3 or more.10 Furthermore, road users seeking to cross the Mersey from this direction have no choice but to pay, as the existing bridge will also be tolled. As Professor Shaoul notes, this is ‘the first known instance of tolling a hitherto free public bridge in order to make a private scheme viable’.11

PFI deals also leave plenty of scope for companies to inflate costs after contracts reach ‘financial close’. In terms of hospital PFIs, for example: ‘actual payments to the private sector turned out to be 20 per cent higher on average than originally estimated’, rising to 71 per cent higher in some cases.12 In terms of roads:

[the Highways Agency’s] payments … are £300m a year, or 20 per cent of its budget for 8 per cent of its roads. The contract for the M25 will add a further £300m a year, meaning that 40 per cent of the budget will be committed for a very small proportion of the network.13

PFIs also incur significant pre-contract costs, with the price for facilitating contracts £2.7 billion in the first half of 2010 alone, a substantial proportion of which was allocated via Partnerships UK (PUK), a semi-public body incorporating industry representations which oversees the tendering process on the UK government’s behalf. As PFI contracts are deemed ‘commercially sensitive’, and fall outside the scope of freedom of information requests, information about its workings is highly limited. It is thus difficult to be clear about the true costs involved.

But PFI looks like a bad deal no matter what angle we come at it from. PFI projects would not be commercially viable without substantial commitments of resources on the part of the state, and PFI is therefore best seen as a ‘political, not a market, construct’.14 As private debt is more expensive than public debt, private sector companies have little incentive to become involved in infrastructure projects unless the terms are loaded in their favour: PFI deals are simply not attractive without substantial ‘sweeteners’ before, during and afterwards. This sets the context for our first substantive point.

# PFI as Corrupt/Corruptible Practice

Concerns have been raised about the anti-competitive character of the PFI tendering and bidding process, as well as the conflicts of interest involved since its introduction. There has been considerable concentration in the PFI ‘industry’, with the numbers of companies bidding to win contracts falling over time. By 2009, ‘one in three PFI projects … attracted only two bidders’.15 The problems that industrial concentration can create were underscored in 2009 when the Office for Fair Trading (OFT) brought cases against over 100 companies, many of whom were and are key PF1/2 contractors, accusing them of ‘collusive practices’ such as cover pricing and bid rigging.16 The OFT’s investigation had begun in 2004 when allegations regarding PFI contracts were reported to it.17 The charge was that, prior to submitting bids, ‘competitors’ had been in contact with one another regarding the contracts. Informal agreements were reached that one company would submit an unrealistically inflated bid which the other would then undercut with a slightly less inflated one. The favour would be returned as part of the bidding on other contracts, when the roles would reverse.

As regulation consultants Europe Economics put it in their report on a survey of the impact of the OFT’s investigation on business practices (itself commissioned by the OFT):

In September 2009, the OFT announced its decision to fine 103 construction companies a total of £129.2 million for infringing UK competition law by engaging in bid rigging activities, largely in the form of cover pricing, on 199 tenders between 2000 and 2006. Prior to this, the OFT had issued a Statement of Objections in April 2008 against 112 construction companies for alleged bid rigging. The OFT’s decision followed a four year investigation into the sector, and constituted one of the OFT’s largest investigations under the Competition Act. Cover pricing is an illegal form of bid rigging, where a firm submits an artificially high bid after discussion with another bidder. These types of bids are not priced to win the contract but clients are not aware of this or of the discussion between the bidders, giving them a misleading impression with regards to the real extent of competition.18

Specifics have been hard to prove, but the general conclusion has been that overpricing has led to substantially higher costs to the taxpayer for services that could have been secured at a much lower cost via the public sector. As Ballieu put it, a ‘procurement system meant to be more competitive appears to have engendered a whole new level of corruption’ and raised questions as to whether ‘bid-rigging [is] intrinsic to PFI’.19 The potential for illegal activities such as bid rigging, as well as legal but morally dubious practices connected with pre- and post-contract cost inflation, are problems that arise in a system claimed to be operating in the public’s interest but which is shrouded in secrecy. PFI, put simply, lacks moral, legal, political and financial integrity, and it is because of this that it is haunted by the spectre of corrupt practice, real and potential.

# PFI as a Corruption of Equity

PFI is far more expensive than conventional financing, as it generates substantial ‘transaction costs’ which are typically borne by the public, either directly (through charges) or indirectly (through taxation). As a result, the outcome of implementing these schemes is redistribution from public to private and from poor to rich in a subversion of notions of equity. Despite the costs of servicing the contracts to the public, once outside public ownership, some PFI deals have produced returns on capital of over 60 per cent, a return on which the public has no claim.20

However, PFI is not simply an accountancy device weighted in favour of the financial interests and balance sheets of contractors; it also involves the transfer of staff from the public to private sector into more precarious and insecure forms of employment. According to the National Audit Office, by 2004 an estimated 35,000 ancillary employees (janitors, porters, cleaners, catering staff and the like) had been transferred from the public sector to the private sector workforce.21 While the first generation of PFI workers were protected to a degree, those who now come to work in what would have been public sector employment before PFI are not. With poorer terms and conditions and lower wages than their (dwindling) public sector counterparts, PFI contracts have thus been key drivers in the creation of a differentiated workforce involved in the supply of public services, with a publicly employed ‘core’ and a cheaper, casualised, privately employed and disposable ‘maintenance’ workforce now in place alongside it.

Working on the public’s behalf, the track records of PFI companies as employers also deserve greater attention than they normally receive. For instance, companies like Carillion, the company awarded the contract for the £429 million new Royal Liverpool Hospital, alongside many other established PFI contractors, have been charged with systematic anti-union activities. As Keep Our NHS Public Merseyside pointed out in its official objections to the scheme:

Carillion, the construction company now selected as Preferred Bidder for the Royal, is deeply implicated in the national construction ‘blacklist’,22 racist bullying and victimisation of healthcare staff at a PFI hospital in Swindon, … deaths at a surgical centre in Hertfordshire … [and] has been involved in several PFI schemes with financial problems.23

While PFI acts as a mechanism for reconfiguring labour markets, undercutting the labour market position of the most vulnerable in structural terms, the issues around inequity extend further. PFI schemes are political priorities reified as features of the built environment. And in terms of their location, they have tended to be built in areas where new infrastructure has been most needed: that is, in the poorest communities. As PFI has expanded, buildings delivered under its auspices are now the places where people pay their rent, access healthcare, visit their libraries, and possibly work in the delivery of public services. The introduction of PFI schemes has actually led to a contraction in the provision of those services. A fixed item on public sector budgets, PFI commitments have to be paid before any other obligations are met. When public sector budgets are cut, as they have been systematically in the United Kingdom since 2008, core provision has to be sacrificed to maintain buildings. As Jean Shaoul puts it, ‘PFI comes at the expense of both capacity and access [to public services]’ (2009: 10), a loss of capacity and restrictions on access that affect those most reliant on services the most.24

# PFI as a Corruption of (Democratic) Accountability

Finding out which PFI deals the UK is involved is notoriously hard because to figure out what is going on you need to know: the name of the project, which is often not used consistently over time; the contract for the project, which is not public; the name of intermediary private company where the money is exchanged, then their accounts can be purchased from Companies House; the name of the private companies involved in the package and their annual reports; the public spending on the project, but this often doesn’t show up in annual accounts because the rules for which PFI agreements to include are varied greatly over time. The obvious question to ask of a PFI is, is it value for money? The answer is almost impossible to find out at the moment, for the public.25

The socially harmful repercussions of PFI encourage reflection on a political context in which it is able to function and grow. PFI does not operate in a vacuum, nor did it fall from the sky: setting up and sustaining a policy of this kind requires very particular forms of political action and ongoing commitment over time. In many respects, PFI is one of the most clear-cut examples we have of the extension of ‘political authority beyond the state’.26 That is, the promotion and implementation of PFI involves a reconstitution of the state’s fields of activity, with private sector actors becoming directly involved in the work of the state but without any formal responsibility beyond their (unknown) contractual obligations.

At least two dimensions of this are worth noting: first, the displacement of politics, and second, the reconfiguration of lines of public accountability. The two are intimately linked because it is the reconfiguration of government in ways that includes private sector actors that mandates changes in practices of accountability. If the workings of PFI were transparent and publicly accountable, it couldn’t function. Notions of public accountability have therefore had to be suspended. The effect of such displacements is to make it much more difficult to identify who is responsible when things go wrong, as they often do. When complaints are registered, they are short-circuited by the confidentiality clauses inserted into PFI contracts. The public does not even have a statutory right to information on whether or not a contractor is actually delivering on its side of the contract.

These reconfigurations of political and governmental practice have repercussions beyond decision-making centres in Whitehall and Downing Street, playing out across the locales and sectors in which PFI has been implemented. Centre/local and before/after distinctions are critical here. While there is often quite high-level political and bureaucratic involvement prior to PFI contracts being agreed, with departments and ministers working together to deliver projects, ensuring contractors meet their obligations afterwards becomes the problem of the local authority or trust on whose behalf the contract was signed. However, these agencies have limited capacity to exercise oversight, let alone control the running of these key elements of public infrastructure. Projective interventions that involve predetermined commitments and the tying of hands, PFI contracts do not so much displace politics therefore as evacuate it, with the emphasis shifting from decision making to managing the fall-out of the problems they create. In this way, PFI represents a corruption of democratic practice and the erosion of control over the workings of the state through the creation of arrangements which asymmetrically lock in the public sector on terms favourable to their private sector ‘partners’, based on contracts which are almost impossible in practice to renegotiate.27

# Conclusion

We have suggested three senses in which PFI arrangements can be thought of as ‘corrupting’: encouraging corrupt practices, inverting relations of equity, and undermining democratic accountability. However, we can only make sense of these forms of corruption by setting them in context. It is tempting to conclude that PFI and its equivalents are indexes of the capture of the state by corporate capital. But we think that is an overly simplistic interpretation. PFI is just one of a series of practical attempts to reconfigure state–society–market relations in ways that benefit the state as much as the market, and in which politics has been a central driver. (Again, as we noted above, without significant political intervention infrastructure projects are not a ‘natural’ home for private investment.) One of the most politically attractive features of PFI, as in related though differently organised schemes focused on the local, is that the work of the state continues while central government is divested of the responsibility and the associated costs of actually performing and being held accountable for it. It is the establishment of arrangements of this kind, and the political strategies that inform them, that give shape and momentum to contemporary corruption within government. PFI is a particularly useful example precisely because it brings these issues to the fore.

# Notes

1 As is indicated in the Introduction and in Chapter 1 of this book, the term has a range of meanings. For us, the important point is that ‘the corrupt act’ can be thought of as emerging against a background web of legal, political, administrative and bureaucratic practices which have themselves lost structural ‘integrity’, which have been remoulded in specific ways and have become something other than they were or might be thought to be.

2 Shaoul, J. (2011) ‘Sharing’ political authority with finance capital: the case of Britain’s public private partnerships’, *Policy and Society*, vol. 30, no. 3, pp. 209–20; Shaoul, J. (2009) ‘The political economy of the Private Finance Initiative’, in P. Arestis and M. Sawyer (eds), *Critical Essays on the Privatisation Experience*, Basingstoke: Palgrave Macmillan, pp. 1–38.

3 Lynch, M. (2011) ‘The logic of sleaze’, paper presented to the International Institute of Ethnomethodology and Conversation Analysis, Freiburg, Switzerland, August; Lynch, M. and Bogen, D. (1996) *The Spectacle of History: Speech, Text and Memory at the Iran-Contra Hearings*, Durham, N.C.: Duke University Press.

4 Then Chancellor Kenneth Clarke addressing the Confederation of British Industry in 1994, cited in Hellowell, M. (2009) ‘Right thinking on PFI’, *Public Finance*, 5 August.

5 For an account of the origins of the term, see House of Commons Library (2001) ‘The Private Finance Initiative’, House of Commons Library Research Paper 01/117.

6 Hellowell, M. (2011) ‘Payback time for the PFI?’, *Public Finance*, 28 March.

7 Shaoul, J. (2009) ‘The political economy of the Private Finance Initiative’, in P. Arestis and M. Sawyer (eds.) *Critical Essays on the Privatisation Experience*, Basingstoke, Hampshire: Palgrave Macmillan, pp. 1–38 (p. 2).

8 Campbell, D., Ball, J. and Rogers, S. (2012) ‘PFI will ultimately cost £300bn’, Guardian, 5 July’ Rogers, S. and Ball, J. (2012) ‘PFI contracts: the full list’, Guardian Datablog, 5 July.

9 *BBC News Online* (2014) ‘Mersey Gateway bridge project underway next month’, 29 March.

10 *Liverpool Echo* (2012) ‘Tolls on the planned Mersey Gateway bridge could be as high as £3’, 29 November.

11 Shaoul, J. (2011) ‘“Sharing’’ political authority with finance capital: the case of Britain’s Public Private Partnerships’, *Policy and Society*, vol. 30, no.3, p. 214.

12 Shaoul (2009), p. 18–19.

13 Shaoul (2009), p. 21.

14 Shaoul (2011), p. 214.

15 Shaoul (2009), p. 6.

16 OFT (2012) *Response to the Scottish Government’s Consultation on the Procurement Reform Bill*, London: Office of Fair Trading, www.scotland.gov.uk/Resource/0040/00409810.pdf

17 Omonirs-Oyekanmi, R. (2008) ‘OFT finds bid rigging rife in PFI projects’, *Partnerships Bulletin,* 6 May; Pollock, A. (2009) ‘Uncovering the true costs of PFI’, *Guardian*, 23 September.

18 Europe Economics (2010) *Evaluation of the Impact of the OFT’s Investigation into Bid Rigging in the Construction Industry*, London: OFT, p. 4.

19 Ballieu, A. (2008) ‘Is bid-rigging intrinsic to PFI?’, *Building Design Online*, 25 April.

20 Heller, R. (2012) ‘A private scourge on public finances’, *Yorkshire Post*, 20 March.

21 National Audit Office (2008) *Protecting Staff in PFI/PPP Deals*, London: National Audit Office, p. 2.

22 As they explain: ‘In 2009 the Information Commissioner seized a database of 3,213 construction workers used by 44 companies to vet new recruits and block employment of trade union and health and safety activists, almost none of whom knew they were on this list. In June 2012 the GMB estimated that from Oct 1999 to Apr 2004 Carillion checked at least 14,724 names with the Consulting Association “blacklist”. The Commissioner confirmed that 224 UK construction workers were blacklisted by Carillion.’ (Keep Our NHS Public Merseyside (2013) ‘Royal Liverpool PFI: a threat to our future’, information leafle, pp. 7–8, www.labournet.net/ukunion/1308/RoyalPFI.pdf

23 Ibid.

24 Shaoul (2009), p. 10.

25 Evans, L. (2010) ‘The Datablog guide to PFI’, *Guardian Datablog*, 19 November.

26 Rose, N. and Miller, P. (1992) ‘Political power beyond the state: problematics of government’,  *British Journal of Sociology*, vol. 43, no. 2, pp. 173–205.

27 Shaou (2009), p. 26.; Shaou (2011), pp. 209–20.