

Silent State reform? The political process of the law on Public-Private Partnership in Uruguay

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The passage of the Public-Private Partnership Law in Uruguay in 2011 can be seen as an indicator of a paradigm shift with regard to the link between the state and the market, despite the fact that it has not been framed as an important axis of “state reform.” Taking as an example the political process that shaped the law in Uruguay, the lack of political consensus and absence or scarcity of internal debate within the *Frente Amplio* becomes apparent. Therefore, the oscillations that result from the political-electoral cycle, but above all the difficulty of building an agreement on this law, mean that changes in sectorial and governmental leadership will inevitably instil traits of gradualism and pragmatism that will necessarily affect the impact of changes and hinder the adoption of systemic development strategies.

Keywords: public-private partnership; neo-developmentalism; state reform.

Reforma do Estado silenciosa? Processo político de lei de Parceria Público-Privada no Uruguai

A aprovação da lei sobre a Parceria Público-Privada no Uruguai, em 2011, pode ser entendida como um indicador de uma mudança de paradigma com respeito à relação entre Estado e mercado, embora não tenha sido enquadrada como um eixo maior da “Reforma do Estado”. Tomando o exemplo do processo político que moldou a lei no caso do Uruguai, se afirmam a falta de consenso político e a ausência ou escassez de debate dentro do Frente Amplio em relação a essas questões. Portanto, os altos e baixos produto do ciclo político-eleitoral, mas principalmente por causa da dificuldade de acordos de construção do instrumento, determinam que as mudanças nas lideranças setoriais e de governo imprimam inevitavelmente características de gradualidade e pragmatismo, que afetam necessariamente o impacto das mudanças e dificultam a adoção de estratégias de desenvolvimento sistêmicas.

Palavras-chave: parceria público-privada; neodesenvolvimentismo; reforma do Estado.

¿Reforma silenciosa del Estado?: proceso político de la ley de Participación Público-Privada en Uruguay

La aprobación de la ley de Participación Público-Privada en Uruguay, en el año 2011, puede ser vista como un indicador de un cambio de paradigma en relación al vínculo entre Estado y mercado, a pesar de que la misma no ha sido enmarcada como un eje importante de “Reforma del Estado”. Tomando como ejemplo el proceso político que dio forma a la ley en el caso uruguayo, se evidencia la inexistencia de consensos políticos, y la ausencia o escasez de debate al interior del Frente Amplio en relación a estos temas. Por lo tanto, las marchas y contramarchas producto del ciclo político-electoral, pero sobre todo por la dificultad de construir acuerdos sobre el instrumento, determinan que los cambios en los liderazgos sectoriales y de gobierno le impriman inevitablemente rasgos de gradualidad y pragmatismo que afectarán necesariamente el impacto de los cambios, y dificultan la adopción de estrategias de desarrollo sistémicas.

Palabras clave: participación público-privada; neodesarrollismo; reforma del Estado.

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1. INTRODUCTION

In Uruguay, the passage in 2011 of Law 18,786 (“Public-private partnership contracts for infrastructure works and the provision of related services”) was touted by a broad majority from across the political spectrum — both from the *Frente Amplio* [wide front] government and the opposition — as a key innovation for the future economic and social development of the nation. This article proposes to investigate, through the reconstruction of the process by which the law was passed, the developmental focus that ended up predominating and the orientation the Uruguayan state would adopt based on this focus.

With this aim, a brief reconstruction is attempted of the process that resulted in this law, the changes the government’s initial proposal underwent, as well as the ideological positioning of the different actors involved. Meanwhile, this debate will be framed within a broader discussion on “state reform” during the *Frente Amplio* administrations, associated with an analysis of what type of state capacities are being built in terms of their suitability to a given development model.

In Uruguay, at least during this first decade and a half of the 21st century, many political actors and the media have associated the notion of “state reform” with a problem pertaining nearly exclusively to the management of government human resources. In this way, left aside or at least invisible are important changes that moulded, shape and constantly redefine the limits and reach of state action, as well as the losers and winners. In short, they make less explicit the discussion regarding the role of the state as a promoter of development.

With the *Frente Amplio*’s national electoral victory in 2005, this debate was once again on the political agenda. Under the idea that state reform was “the mother of all reforms,” Tabaré Vázquez’s administration was able to make only timid attempts at changing an administrative structure very much permeated by informal practices that were the product of — among other things — political blockades within the government itself (Narbondó et al., 2010).

However, this is certainly not to suggest that the Uruguayan state did not undergo a transformation. This is where the argument that justifies this article comes in; in the absence of an explicit story and project of reform linked to the type of state needed in Uruguay, these types of measures constitute “silent reforms,” not for lack of media impact but because it is difficult to analyse them in terms of state reforms. In other words, there is no apparent concern for understanding the impacts that accompany these measures in terms of state structure (what bodies are empowered, what capacities are being built) or models of interaction and regulation between the public and private sectors.

This article is based on the assumption that such “silence” in relation to changes is explained primarily by the absence of political consensus but also by the absence or scarcity of debate within the governing party in relation to these issues. Therefore, the oscillations that determine changes in sectorial and governmental leadership as a whole inevitably acquire the traits of gradualism, pragmatism and/or risk aversion, leaving the problems or dimensions that could be most conflictive unresolved.

This work is qualitative and relies on a review of secondary resources (parliamentary acts, news articles, previous articles on the topic), as well as a series of semi-structured interviews with qualified informants who are part of the process of formulating and implementing the norms studied.

The article is organized in the following manner: first, we frame the discussion in relation to processes of state reform in Latin America and, more specifically, the direction taken by progressive governments in the region. Furthermore, Public-Private Associations (Asociaciones Público-privadas, APPs) are presented as a relatively novel tool that is broadly linked to the previous discussion. Subsequently, we present some background on the sector that will serve to justify the relevance of this case and help explain the reasons for which the issue was put on the government's agenda. We then move our focus to the parliamentary process that led to the PPP law, as well as the characteristics that the measure eventually assumed. Finally, we end with some reflections regarding the information presented.

2. BACKGROUND

2.1 STATE REFORM AND NEO-DEVELOPMENTALISM

The notion of “state reform” took hold strongly in Latin America as a result of the fiscal crisis of developed states and the end of the majority of authoritarian processes in the region (Fleury, 1999). This concept was quickly utilized to name different initiatives, some strictly administrative in nature, others involving issues associated more with the ends of state intervention (the reasons behind it).

Electoral victories by progressive political parties in Latin America in the late 20th and early 21st century brought with it — among other things — the beginning of a process of redefinition of the development strategy to follow. In this sense, at least discursively, the neoliberal paradigm began to lose steam, and the idea that greater state involvement was needed in various productive and social processes took hold.

Such intervention would by necessity require the adoption of new management strategies and tools and, consequently, public investment in new political and administrative capacities. At the same time, some principles of the neoliberal model were not put in doubt, essentially the prioritization of macroeconomic equilibrium and the control of the fiscal deficit. Third, the return or expansion of the reach of the state would not necessarily imply a loss of the ground gained by the market; there seems to be a relative consensus regarding the importance of the public and private sectors cooperating and working together (Boschi and Gaitán, 2009).

The grounds for this position are various, but at least two stand out. One is more pragmatic and lies in the recognition that contemporary Latin American states lack the resources needed to face the necessary investments in diverse sectors of the economy and social development on their own. Therefore, this situation of “constant austerity” (Pierson, 2006) requires state institutions to seek partners in the private sector, whether in businesses or civil society organizations.

However, there is also another justification that responds more to an ideological change in comparison with the traditional left — the conviction by many sectors or factions of these political parties that in some cases, it is necessary to introduce into the public sector a more free-market logic, principally based on the introduction of new management tools that are guided by a contractual and competitive basis.

This development strategy, based on a large dose of pragmatism, involving a greater state presence in areas such as strategic planning and leadership in certain sectors but supported by public-private participation, together with a clear transformation of policies linked to social protection, is what some authors have characterized for some years now as the “neo-developmental” or “post-neoliberal” model (Grugel and Riggirozzi, 2012).

Following Santos and partners (2013), neo-developmentalism is understood here as “[...a] model implemented in various countries in the region whose economies have experienced strong growth driven by yields from common goods (the land through agricultural products, hydrocarbons and minerals), where the state plays an active role in instituting a new mode of regulation (Harvey, 1998). This new mode of regulation generates institutional conditions for the arrival and presence of transnational investments at the same time that it deploys compensatory social policies for the redistribution of income, imposing some conditions on transnational capital” (Santos et al., 2013:1).

In Uruguay, the arrival to power of the *Frente Amplio* in 2005 marked the beginning of this process. During its first administration, the central axis was the socioeconomic consequences of the crisis of 2001-02, which determined that the priorities on the government agenda would be the implementation of important changes regarding assistance and social protection (the creation of the Ministry of Social Development and putting into motion of the “Emergency Plan”), health (the creation of the National Integrated Health System), the reform of the tax structure based on the creation of the Income Tax on Natural Persons, and the reinstatement of collective bargaining.

To some extent, and with a differential scope, these transformations managed to introduce a clear change in perspective compared to earlier governments. As a result of the reduction of social deficits and notable improvement in macroeconomic indicators, the second *Frente Amplio* administration (2010-14), under José Mujica, began to prioritize some changes directly linked to the country’s economic development and productive strategy, as well as its international insertion.

The first *Frente Amplio* administration saw oscillations regarding state reform. From that process, the overall result could be characterized as a “layer change” (Mahoney and Thelen, 2010) to the extent that the innovations — both legislative and organizational — did not come to replace existing institutions but were added to an already complex institutional framework.

Roughly, it could be said that political and administrative reforms in the Uruguayan state (although not only in this area) have followed an incremental and/or gradualist logic unlikely to break with the previously existing rules. To a large degree, these characteristics are because the Uruguayan political system lacks the incentives necessary to promote reforms that are politically very costly. Thus, in general, innovations are more likely to be introduced at the margins of existing policies as a mechanism to avoid vetoes.

Narbondó and partners (2010) identified two large groups in the Vázquez government that operated as coalitions to veto the changes promoted in the Public Administration. On one hand, defenders of the maintenance of the status quo that responded to a traditional clientelist logic, and on the other, certain actors identified with a managerialist-style state project. However, the success of the blockade was not and is not synonymous with immobility. “This does not mean the non-achieve-

ment of a transformation of the state but rather its achievement through passive reform — allowing the whole to be degraded and carrying out partial, selective, limited and less visible transformations [...]” (Narbondo et al., 2010:51).

José Mujica’s administration also began to consider state reform to be one of its principal challenges. However, once again, the advances or projects were either made invisible or reduced to very specific sectors, which in almost all cases meant new practices regarding the link between public and private sectors, such as, for example, the creation of Sectorial Councils under the Productive Cabinet (Bianchi et al., 2014).

Among these innovations, the approval and implementation of a law on public-private partnership (PPP) stands out. However, it was not until the inauguration of the third *Frente Amplio* administration in March 2015, once again under the leadership of Tabaré Vázquez, that this instrument was clearly installed as the government’s preferred option for financing public works. These types of transformations must necessarily be problematized as an important dimension of the so-called “state reform.”

2.2 THE INFRASTRUCTURE GAP AS A LIMITATION ON DEVELOPMENT

Infrastructure deficits or gaps are not unique to Uruguay; on the contrary, they are a common problem throughout the whole region. In this sense, the main challenges Latin American states face in terms of infrastructure services could be summarized as follows: high dispersion and multiplicity of public views on infrastructure, with the consequent lack of capacity to adopt integral solutions; physical limitations or scarcity in the provision of infrastructure and services; institutional and regulatory failures or obstacles, in both the conducting of policies and organization of markets; and the weakness and/or absence of sustainability criteria in policies such as transportation (Cepal, 2010 cited in Perrotti and Sánchez, 2011).

A clear indicator of this infrastructure gap in the region, or the difficulties countries have in curtailing it, is the fact that investment in economic infrastructure has fallen in recent decades from nearly 4% of GDP in the period from 1980 to 1985 to 2% between 2007 and 2008 (Perrotti and Sánchez, 2011). This decline is explained fundamentally by the reduction in public investment during the 1990s, associated with the withdrawal of the state from many economic and productive activities, and the privatization of various assets, such as public enterprises.

At least since the post-dictatorship period, Uruguay has been thought of as a logistic hub at the regional level. To meet this objective, various government administrations implemented a series of measures that tended to generate the conditions for this specific type of regional and international insertion, such as the law on ports or the creation of free-trade zones, among others (Opertti, 2010). Meanwhile, during the last decade of the *Frente Amplio* governments, there seems to have been a relative consensus among various political-partisan actors and private actors regarding the existence of a major infrastructure deficit in the country and the fact that this deficit slows development.

The infrastructure investment agenda in Uruguay appears quite varied, since there were and continue to be significant demands in terms of routes and ports, for example, but there are also

large deficits in terms of providing infrastructure in centres for the provision of social policies. Historically, this type of investment was made from public resources, generally included in the national budget.

However, the new situation of “permanent austerity” with which governments must contend means that the state faces significant restrictions in regard to singlehandedly managing various demands for investment in infrastructure. This situation has led to the search for different financing options outside the budget, and these are directly associated with different forms of intervention and participation by the private sector. One novel method of attracting private investment to finance public works is the signing of public-private partnership (PPP) contracts.

2.3 PUBLIC-PRIVATE PARTNERSHIPS

Conceptually, PPPs can be understood as “cooperation of some sort of durability between public and private actors in which they jointly develop products or services and share risks, costs and resources connected to these products” (Van Ham and Koppenjan, 2001 cited in Hodge and Greve, 2005). Such associations should meet three criteria: 1) that the private participation exist at least in the financing and management of projects; 2) that there be some effective transfer of risk; and 3) that a long-term contractual relationship be established (Espelt, 2015).

In this sense, PPPs could be considered not only as a financing tool for large works but also as a facilitator of the exchange of abilities between the public and private sectors, whether in regard to issues of technical knowledge, the ability to mobilize investments or management principles, among others (Robinson et al., 2010). At the same time, however, the existence of PPPs necessarily brings with it a reconfiguration of the relationship between public and private sectors, where the relationship is not only that of contractor-contractee but begins to include greater efforts at cooperation and the definition of common objectives. Therefore, the discussion surrounding how to manage these projects becomes an eminently political question.

In any case, PPPs appear as a management instrument that clearly illustrates the dominant paradigm in terms of public management. In fact, they appear intimately linked to the principles of New Public Management (NPM) to the extent that they are conceived in part as a mechanism for optimizing the state’s scarce resources based on greater market involvement (Pliscoff and Araya, 2012; Pollitt and Bouckaert, 2011).

Therefore, the debate on PPPs is inevitably associated with discussions about privatization processes, to the extent that it stems in some way from the assumption that certain areas exist in which public institutions do not possess sufficient capacity to intervene in a satisfactory manner, and thus, the market should participate in order to guarantee a more efficient management of resources (Pliscoff and Araya, 2012).

As mentioned above, there is no single way to structure this link between the public sector and the private sector. In this sense, Robinson and partners (2010) identified five types or models of PPPs based on the different responsibilities assumed by both sectors, as illustrated in chart 1.

CHART 1 **TYPES OF PPPS**

Type of PPP	Public sector responsibilities	Private sector responsibilities
Operate and Maintain (O & M)	Ownership of asset. Monitor and regulate financial aspects.	Management of asset by operating and maintaining it in a specified condition for a fee.
Rehabilitate, Operate and Transfer (ROT)	Planning (specification of the requirements for the service or asset).	An existing asset is transferred to the private sector, which rehabilitates and administers (operates and maintains) it to a specified condition for a fee until it is returned to the public sector.
Design, Build, Operate and Maintain (DBOM)	Planning (specification of the requirements for the service or asset), financing the cost of the asset, monitoring and regulation of the performance of the asset.	Designing based on public sector requirements; constructing, operating and maintaining asset; financing the operating expenditure for a fee.
Design, Build and Operate (DBO)	Planning (specification of the requirements for the service or asset), purchasing of asset for a pre-agreed price. Monitoring and regulation of asset/financial management services retained.	Designing based on public sector requirements, constructing, operating and maintaining the asset for a fee.
Design, Build, Finance and Operate (DBFO)	Planning (specification of the requirements for the service or asset), pay for availability and/or use of asset (and services) through unitary charge. Monitoring and regulation of financial management services retained.	Designing based on public sector requirements or output specification; financing, constructing, operating and maintaining asset. Retains ownership and associated risks, but assets are transferred to the public sector at the end. Receives payment reflecting capital investment and operating expenditures.

Sources: Robinson and partners (2010) and Plissock and Araya (2012).

Clearly, PPPs of the DBFO model are the most ambitious options in terms of the involvement of private entities in the process and is in fact considered “PPP par excellence” (Broadbent and Laughlin, 2003 cited in Robinson et al., 2010). In fact, this is the format assumed by the greatest quantity of projects implemented in one of the main promoters of this tool, the United Kingdom, based on the so-called Private Finance Initiatives (PFI) widely utilized in arenas such as health. On the other hand, and as we will see in what follows, this is also the configuration assumed by PPPs in Uruguay based on the new law.

2.4 PUBLIC PRIVATE PARTNERSHIPS IN URUGUAY PRIOR TO 2011

The existence of collaboration initiatives between the public sector and the private sector is not new in Uruguay. In fact, since the end of the 19th century, the country has had experiences of private partic-

ipation in public investments such as trains and electricity provision, among others. This mechanism operated prior to the consolidation of the state and its bureaucratic apparatus.

In general terms, the regulatory framework in Uruguay has shown notable shortcomings in the coordination of policies and regulations regarding investments in infrastructure with private participation. In this context, when state expenditures pose different fiscal risks that go beyond the budgetary period, the contract should go to the Parliament. Thus, the PPPs that are sought require approval under law. Currently, Article 188 of the constitution establishes that private capital can be admitted in different arenas as long as they are approved by three-fifths of each chamber and the amount of private investment does not exceed that of public investment.

According to Opertti (2010), the construction of what could be called “logistic Uruguay” “[...] was developed in phases that were clearly differentiated in time, each of them marked by high-impact milestones that contributed to the role Uruguay plays today as a regional logistic pole” (Opertti, 2010:7). Thus, the period between 1985 and 1995 saw a phase of modernization and development of legal frameworks; a second phase (1995 to 2005) involved the granting of concessions for infrastructure and development of regional distribution centres; the first *Frente Amplio* administration (2005-10), meanwhile, saw a process of “logistic clusterization.”

Following the restoration of democracy, the first governments led by the *Partido Colorado* [Red Party] (1985-89) and the *Partido Nacional* [National Party] (1990-94) established the objective of returning the country to the international trade scene, mainly based on attracting foreign direct investment (FDI) and beginning to develop logistics operations for international trade goods (Opertti, 2010). To do this, it was necessary to modernize the regulatory frameworks, for which at least two great innovations occurred: the law on free-trade zones in 1987 and the law on free ports of 1992.

[...] under the umbrella of the legal frameworks of Free-Trade Zones and Free Ports, international corporations encountered an orderly form with few barriers to entry and exit by which to enter the region, as well as a shield for the protection of their merchandise through the centralization of merchandise inventories in Uruguay. [Opertti, 2010:8]

During the second phase (1995-2005), the state’s orientation focused on the construction of key infrastructure for the country as a regional distribution centre for goods based on the utilization of the instrument of concessions. In this case, the main points to highlight were the concession for the construction of a specialized container terminal at the Port of Montevideo (2001) and the concession for the construction of a new airport terminal (2003) (Opertti, 2010). Such concessions were granted under the normative umbrella of the law on concessions for public works (No. 15,637) in 1984, the last official year of the dictatorship (Palma, n.d.).

In this regulatory context, elected officials assumed that the levels of investment it enabled remained insufficient to maintain the growth rates the country was experiencing. Based on this diagnosis, it was understood that it was necessary to make the country more attractive to foreign capital.

The new law was presented by its promoters as an opportunity to consolidate the country as a regional logistic pole, on one hand, and to resolve certain emergencies of a social nature on the other. The law came to fill a regulatory gap, addressing the issue of PPP contracts in a specific and integral manner. However, this regime is classified as optional to the other contracting regimes.

3. THE PUBLIC-PRIVATE PARTNERSHIP (PPP)

3.1. MAIN CHARACTERISTICS OF THE LAW

The approval of the law on Public-Private Participation (PPP) was a relatively rapid process, taking into account average times for the Uruguayan Parliament; it was introduced in Parliament on 9 November 2010 and approved on 12 July 2011. This fact in some way provides an indication of the political relevance of this issue for the ruling party.

On the other hand, the law was supported by all parties represented in parliament, a fact that illustrates certain consensuses with regard to the specific initiative but also, more generally, how the link between the state and market should be structured. However, it should be clarified that this majority position was not the only one. In fact, sectors of the *Frente Amplio* such as the Communist Party raised their objections and criticisms, not only to the project but also to the way in which it had been presented and negotiated:

The project was promoted by the government and publicly presented by the president of the National Development Corporation before private business people in September 2010. It was never analysed in the political party, and it never garnered political agreements or organic decisions backing it; on the contrary, those procedures were avoided. [El Popular, 2011]

Concretely, the objectives of the initiative were as follows:

- To establish a regulatory framework that was self-contained and specific for the design, approval and management of PPPs in the development of infrastructure and related services.
- To improve the country's competitive position with regard to attracting investments in infrastructure.
- To apply the same regulatory framework to all instances of PPPs.
- To improve the process for processing private initiatives.
- To establish a regime that offers guarantees and predictability to the public and private sectors.
- To regulate the different procedures included therein.

Meanwhile, under this framework, it was possible to develop some of the following benefits: a) the construction, installation or transformation of works, equipment, systems and products or complex goods, as well as their maintenance, updating or renovation, exploitation or management; b) the integral management of complex facilities; c) the manufacture of goods and the provision of services incorporating technology developed specifically for the purpose of providing services that are more

advanced and economically advantageous than those existing in the market; d) other services related to the development of public services or of general interest.

Among the particularities of this initiative is the fact that it does not eliminate or substantially modify any existing regulations. The law states that to carry out any project through the PPP mechanism, it must demonstrate a greater “value for money”¹ than the other options.

This feature is a clear example of “layer changes” in that the new rules do not modify existing ones, but all the while, their implementation can strongly impact them. In this case, to the extent that the appropriate mechanisms for prioritizing PPPs are politically available, the remaining options could remain virtually unutilized, although the regulation itself establishes a limit (a broad one, but a limit nonetheless) to the utilization of the tool: the total amount that can be allocated to these contracts is equivalent to 7% of the previous year’s GDP.

Due to the importance of these projects, there is a recognition of the strong component of professionalization of the management capabilities required to carry out accurate prior assessments. In this sense, the international experience has tended either towards the creation of agencies specialized in these projects or the existence of inter-ministerial units that, when the time comes, can act as counterparts to the agency and private actors (Espelt, 2015).

In the Uruguayan case, the option eventually adopted was that of creating a new organization charged with managing various phases of the PPP contracting process. A PPP Project Unit was established within the Ministry of the Economy and Finance with the following tasks: carry out the economic-financial follow-up of projects, verify compliance with budgetary aspects, assess the associated risks, and carry out the analyses and records for which the MEF is responsible.² This unit currently comprises five officials, all of them economists. A Register of PPP Projects was also created under the MEF.

However, the architecture of the management of PPPs comprises three actors: in addition to the MEF through the PPP Project Unit, there is also the National Development Corporation (Corporación Nacional para el Desarrollo, CND) and the Office of Planning and the Budget (Oficina de Planeamiento y Presupuesto, OPP), all of these organizations are dependent on the Presidency of the Republic.

This configuration is no mere coincidence and could be due in large part to the distribution of power between the different sectors of the *Frente Amplio* and the logic followed by President Mujica when designing the government teams. In this sense, throughout the entire period of government, there was talk of the existence of two economic teams; one embodied in the MEF authorities and the figure of Vice President Danilo Astori (belonging to the *Frente Líber Seregni* [Liber Seregni Front]), and another located in the OPP with the *Movimiento de Participación Popular* [Popular Participation Movement] (MPP) as a major opposition sector. This situation of competition and mutual distrust

¹ Value for money is understood as “the difference between the present value of the total net cost of a Public Project of Reference (PPR) adjusted for risk, revenues from third sources and the total cost of the PPP project. The total cost of the PPP project is determined by the present value of the flow of payments received by the Contractor from the Public Administration, the administrative costs of the PPP contract, the cost of the retained project risks and gain in competitiveness” (MEF-CND, 2012:7).

² The regulatory decree also opens up the possibility for the MEF and OPP to create a Coordinating Committee for the Evaluation of PPP Contracts.

clearly affected the way in which the law was designed and subsequently implemented, for it markedly hampered dialogue and coordination among the agents responsible for promoting and managing the projects.

The transfer of this conflict from sectors of the government to the management of bodies that were so important to the country's economic and productive policies was diluted with the assumption of office of the new administration, as the leaders elected by the president to lead the OPP (Álvaro García, belonging to the Socialist Party) and the MEF (Danilo Astori, leader of *Asamblea Uruguay* [Uruguay Assembly] and economy minister in the first *Frente Amplio* administration) were in clear agreement.

The other key players in this project are, logically, private companies interested in participating in these types of projects, as well as what the law calls the "Contracting Public Administration" (Contracting PA). Essentially, this Contracting PA could be any sectorial ministry or any departmental government that promotes a public-private partnership. In all cases, these bodies are responsible for the design, structuring and conclusion of PPP contracts, as well as the monitoring of their correct execution and compliance with the obligations assumed by the contractors.

This point appears as a fundamental aspect in understanding the law's scant implementation thus far, but it also illustrates some of the risks of adopting tools of this nature without framing them within systemic reform processes. First, in order for PPP projects to exist, the Public Administration must explicitly demand such an option. This so far has not occurred, and a not-so-outlandish hypothesis to explain this would be the existence of political and administrative resistance that are the result of well-established procedures, such as that of bidding (Interview with high official, 2015).

Uruguay's Public Administration is accustomed and prepared to carry out certain practices, and any novelty will necessarily imply a learning cost that involves resistance and/or blockages. Therefore, if the government is committed to implementing this tool, it will need to work in favour of some reforms in the existing sectorial ministries; it is not enough to professionalize the units responsible for managing and regulating the financial dimensions of the projects.

On the other hand, as has been mentioned, the contracting Public Administrations are not only responsible for requesting PPP projects but must also design the contracts and carry out follow-up and evaluation of the execution of the projects. Once again, the question arises as to the current administrative and political capacity of the ministries to carry out these tasks such that they avoid certain risks of capture or inefficiencies on the part of private businesses, thus preserving the public nature of these goods and services.

In regard to the sectors of activity that may be the subject of PPP projects, the law is exhaustive and stipulates that these contracts may be established in the following areas: road, rail, port and airport works (including rural roadways); energy infrastructure works; waste disposal and treatment; and social infrastructure works. However — and this is a clear difference between the Uruguayan case and other similar laws — in no case may they include the specific services of these centres: educational services in schools, health services in medical care centres, and security, health and re-education services in prisons. This point will be newly addressed in a review of the parliamentary process.

Finally, as a last point to be highlighted, a novelty in this case is the explicit possibility that the Administrators of Pensions Savings Funds (Administradoras de Fondos de Ahorro Previsional, Afap) be financed by these types of projects. This point is not a minor one, given the discussions regarding the mixed social security system established in the country as of the reform in 1996, which was inevitably an issue that would appear in the parliamentary debate presented in the next section.

3.2 THE PARLIAMENTARY PROCESS

Presented below are speeches made by different political actors during the House of Representatives session of 11 May 2011, in which some debates can be identified that are interesting for the purposes of this article.

Despite the aforementioned cross-party agreement through which the law was approved, the draft legislation originally presented to Parliament by the Executive Branch was much more akin to the classic modalities of PPPs existing in countries such as the United Kingdom or Spain, similar to the logics of the PFIs described earlier. In these cases, the management of services can also be shifted to private actors, as is the case with public hospitals in the Community of Madrid (Alonso et al., 2015).

This aspect was undoubtedly the source of greatest opposition and resistance within the *Frente Amplio* itself. In fact, in the parliamentary process, the project ended up explicitly excluding the management of services. Preserving the management of services exclusively in the hands of the state was the point that silenced the main resistance from some key actors such as the PIT-CNT labour union and the political parties known as the MPP and PCU.

These changes were addressed by the opposition during the parliamentary process: “The draft legislation the government presented was undoubtedly much more liberal than the one we are bringing today. To put it in vulgar or familiar terms, the *Frente Amplio* camp “watered down the wine” (Representative José Carlos Cardoso in the House of Representatives, 11 May 2011).

A review of the debate that occurred in the House of Representatives is a good way to approximate the signs and significance the approval of a tool with these characteristics had for the *Frente Amplio* government. While on one hand, it was read as an abandonment of some foundational principles of the left, by adopting measures similar to those rejected in earlier phases:

We are faced with a first dilemma that historically was ideological in nature and that, luckily, seems to have ended. Without a doubt, we have yet to confirm a process of de-ideologization that we want to celebrate, and what the state cannot do by itself [...] may be done by private companies that associate with it and complement one another in their efforts. [...] President Mujica’s initial project was more privatizing than the Law on Public Enterprises of 1992. [Representative Pablo Abdala in the House of Representatives, 11 May 2011]

Before it was neoliberalism and now it isn’t, but with all the digressions they make today, the *Frente Amplio* approves what it rejected before. That’s the truth. [...] However, I welcome it! [...]

Chile, Spain and others set an example. We told the sub-secretary of economy and finance: We welcome capitalism! They took a long time, but they got there. [Representative Jorge Gandini in the House of Representatives, 11 May 2011]

Meanwhile, others viewed the law as a symbol of pragmatism and modernization in the conceptions of the left in Uruguay, one that at the same time managed to achieve a design that establishes various guarantees for the public sector. As an example, we present some speeches illustrating this point below:

Previous speeches dealt with the ideological debate over the nature of public and private and the possibility that this may bear some resemblance to other attempts at privatization that occurred in the past. [...] What we have here is the construction of a new public infrastructure, an increase in the public patrimony to enable to continuity of growth and development. There is no loss of sovereignty by Uruguayans or of the importance of the public role of the state in growth and development. [...] There is talk of accepting private participation. Yes, of course! [...] This project, because it is self-contained, has greater control and ensures greater efficiency than the mechanisms that are available to date, which have given us so many headaches in the past by virtue of its application. [Representative Alfredo Asti in the House of Representatives, 11 May 2011]

[...] despite the progress, we, the communists, are not in agreement with this draft legislation that has been presented [...] Since the *Frente Amplio* assumed power, we have highlighted important facts, understanding the role that the state should have in relation to the productive country. [...] we think that private is not synonymous with efficiency. [...] In light of the adherence of the traditional parties in this vote, I recalled an anecdote I was told when I was very young, when I was just starting out in politics. A legislator was speaking, making a fiery presentation, and he suddenly stopped speaking and left the hall, and when they asked him why he had left, he said: "Because my rivals are now applauding me." I wanted to mention this because those with whom we have usually been at odds are now with us. Perhaps we are making a mistake. [Representative Hugo Dávila in the House of Representatives, 11 May 2011]

These expressions clearly illustrate, on one hand, the different conceptions that exist among the different political parties regarding the role the state and market should play in the country's economic and social development. However, even more importantly, these quotes allow us to note certain changes in the position of the *Frente Amplio*, or at least some diverging positions, independently of the political intentions of some speeches.

Finally, another important dimension in regard to perceiving the differences between the political parties is the scope of the new law. Broadly speaking, while opposition representatives criticized the fact that the law had been curtailed by not including the management of services such as health or education, government lawmakers rightly defended this option, considering it an important guarantee of the public nature of such services.

[...] Article 3 now states that health-related services cannot be provided in health centres. But health services are privatized in health centres! If this new category of doctor entrepreneurs have placed CT scans to X-ray services [...] Why can't we make a PPP contract for a private entity to come and build a hospital, maintain its physical infrastructure [...] but also provide healthcare and have the state pay for it? [Representative Jorge Gandini in the House of Representatives, 11 May 2011]

It has been said that, by being restrictive in the proposal, we limit the potential this tool can have. Well yes, because we do not want this tool for just anything. [...] Does accepting the reality of the world today in terms of sources of financing imply accepting the status quo? No, we are going to change several situations, and we are committed to continue making progress in finding the tools for this transformation. [Representative Yerú Pardiñas in the House of Representatives, 11 May 2011]

3.3 THE IMPLEMENTATION OF PPP IN URUGUAY

At the time of writing, and according to the websites of the PPP Unit and the MEF, a total of 13 processes are currently underway — with differing progress — linked mostly to issues of roadways, but there are also initiatives involving the construction of prisons and educational and hospital infrastructure.

While these projects appear to be scarce in terms of the political priority that was originally assigned to the tool, this low number can be explained by two major factors. First, the way in which the authorities communicated and “sold” the tool: once the law was approved, various government actors proposed that PPPs resolve infrastructure deficits, for example, in areas such as school facilities. However, it was quickly observed that the management of these projects has time periods that are difficult to reduce, much more in a context of multiple learning experiences.

Second, however, the instrument was underutilized because the different sectors (the contracting Public Administrations) had no greater incentive for opting for this tool. The installed capacities and organizational culture of the ministries were oriented towards more classic procedures such as bidding, and thus, the adoption of this new logic would imply taking on costs.

However, the change in government opened up new possibilities for PPPs in Uruguay because MEF and OPP authorities explicitly emphasized the role these associations could play in maintaining the levels of growth and investment the country has experienced in recent years. For this, two parallel actions were carried out. On one hand, in 2015, the Vázquez administration modified some aspects of the regulatory decree of the law as a way to make the procedure more agile. Additionally, the macroeconomic situation seems to have led the government to attempt to contain public spending and the fiscal deficit, and thus, PPPs were proposed as the only way for different sectors to achieve their infrastructure goals.

In fact, in response to a request for budgetary resources by the University of the Republic (the country's foremost university) to carry out the restructuring and improvement of the Hospital de Clínicas — a university hospital that plays an important role in public sector health care — the government stated that the only way to carry out the projects was through PPP. This statement created a strong conflict with students, teachers and university authorities, which led to the recent rejection

of this tool by the university's governing body. This is an example of how, six years after the approval of the new law, it has not achieved legitimacy among many social and political actors.

4. CONCLUSIONS

The resulting law in the Uruguayan case is a clear example of institutional change in layers, in the sense that the new rules are “annexed” into the existing institutional framework without the existing rules and framework being repealed or transformed. Such innovation, which has the potential to transform the institution, is an option that, deliberately or not, ends up avoiding or at least postponing various reforms to the traditional Uruguayan state apparatus. In this case, the PPP law installs in the public sector a contract-type model characteristic of the private sector that brings with it various needs in terms of the creation of capacities for the regulation, follow-up and evaluation of these projects.

On the other hand, the implementation process seems to account for a significant investment of administrative capacities by these units, but the actors that should promote and sustain the use of the tool (the sectorial ministries) do not appear to have followed a similar process, particularly regarding the capacity to carry out monitoring and subsequent evaluation of projects. If this continues to be the case, the abandonment of sectorality could end up justifying a process of centralization in the central actors located in the orbit of the Presidency. Here the capacities exist, but they are very specific types of capacities, those oriented towards a market logic.

An example of this is the fact that the PPP instrument can only be utilized once it is established that this procedure guarantees the best “value for money” in comparison to other options. However, this conditionality is not a merely technical issue; on the contrary, it represents an eminently political matter, for it is through actions that the predominance of a logic of efficiency is installed that is not necessarily that which should guide the actions of the public sector.

This process presents a few problems in addition to certain questions related to the direction of the changes. On one hand, the organizational design of the law presents multiple actors that monitor and are monitored (the MEF, OPP and CND), expressing, among other things, a contextual situation of mutual distrust linked to the profiles of the leaders of these organizations. Did this configuration represent a model that established multiple obstacles with the intention of guaranteeing a certain amount of control and thus avoiding situations of capture, or on the contrary, did it end up as a structure that slows things down more than it guarantees by giving precedence to distrust between sectors of the government? Certainly, the answer is a combination of both options.

Beyond these operational issues, however, the discourse that can be observed from some of the actors involved in the process and promoters of the tool is one of conviction that the private model (contracts) is better and more efficient than the public one, as it contributes to better disciplining the behaviour of the agencies involved and as a consequence, allows for the creation of better conditions for achieving previously defined public objectives. Moreover, another argument in favour of opting for this path is the difficulties that exist within Public Administration. The problem is that this point can act as a self-fulfilling prophecy in the sense that private management will be better to the extent that no attempt is made to reform public management. Hence, from this position, the private sector will be more efficient not only in economic terms but also in terms of political costs. Indeed, under

this viewpoint, it is easier to seek private partners than to attempt to build a more efficient state. The problem is that there is no empirical evidence to support this reasoning.

This position is no longer found only on the right side of the political spectrum; it also represents the perspective of large sectors of the *Frente Amplio*. It contrasts clearly with the historical views of the left but also with views currently held by other sectors. Although the differences emerge on a daily basis, they do not appear to be addressed clearly in internal debates, or at least the inability to reach certain consensuses may be leaving open the possibility that due to programmatic uncertainty, measures will eventually be adopted that conspire with the basic objectives of said political force.

Therefore, studies of these types of initiatives are relevant to the extent that the adoption of a tool such as PPPs can be generating the conditions for a more important transformation in the structure and functioning of the state, which may be responding to two different logics.

On one hand, if it is explicitly a strategy for bypassing the existing structures, one could speak of a “silent state reform” in which the lack of a general vision regarding what the role of the state should be and the link between the latter and private business, sectorial changes may be introducing market logics that have not been properly evaluated. This may generate inconsistency between a narrative of strengthening the state’s role in promoting development and concrete instruments that empower the market.

Another option could be that this orientation has not been explicitly promoted nor defended by any actor but that it instead responded to a strictly pragmatic logic, with the intention of accelerating processes, avoiding high political costs and at the same time resolving the country’s infrastructure deficit. In this case, it could be an “unconscious reform”, where the uncritical adoption of management instruments can also lead to undesired effects.

Whatever the real motivation was, it appears necessary to begin to produce greater and better public debates linked to development strategies in general and reforms of the state apparatus in particular. In highly institutionalized contexts such as the Uruguayan case, where there are legal guarantees and institutional counterweights that function relatively well, the lack of agreement regarding the formulation of public policies can constitute an important check on some government initiatives. While the notion of “silent reform” presented in this article should be the object of a larger study incorporating more cases, could be an interesting one to analyse processes of gradual institutional change in politically complex issues.

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