

# Regulative, Normative and Cognitive Institutional Supports for Relational Contracting in Civil Infrastructure Projects

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# Governance Challenge of Civil Infrastructure Projects

- Project Shaping sees collusion between public or private sponsors and planning consultants to initiate new projects whose long-term sustainability is uncertain
- Project Design sees collusion between public sponsors and designers to minimize operating costs often at expense of construction costs (and associated fees)
- Project Construction sees continual conflict between client and construction contractor regarding plan's interpretations
- Operations sees efforts by end-consumers to pressure governments to renegotiate terms that led excessive costs to be passed through

**Coordination of actions of multiple stakeholders across the life of multiple interconnected transactions**

# Governance

## Hold-up

L/R	Cooperate	Defect
Cooperate	4,4	2,6
Defect	6,2	2,2

## Displaced Agency

L/R	Cooperate	Shirk
Cooperate	4,4	2,4
Shirk	4,2	2,2

“the effecting of good order” (Williamson, 1996: 11)

# Regulative Institutional Supports: Economic & Legal Perspectives

## ■ Agency Theory

- *Ex ante* choice of contract → *Ex post* incentives
- BUT bounded rationality & opportunism + asset specificity and/or probity → contractual hazards

## ■ Transaction Cost Economics

- *Ex ante* choice of governance structure → *Ex post* court-sanctioned managerial discretion
- BUT court sanctioned discretion has limits
  - Unified
    - Few consumers sufficiently sophisticated
    - Producers can't "govern" end users
  - Trilateral commitment mechanisms lack credibility
  - Network
    - Distribution of ownership
    - Reputational capital → BUT HOW AMASSED???

# Residual Contractual Hazards Have to be Managed

What BAA had realized was that, although it might be able to transfer the liability — the obligation to pay — when a risk materializes, it could never transfer the risk itself, in the sense that it [BAA] would always be the entity that suffered the harm and that frequently recovery of a sum of money from a third party would unlikely repair that harm to any meaningful extent. In any event, BAA had recognized that some harm cannot be quantified, at least for the purposes of establishing contractual liability.

# Normative & Cognitive Institutional Supports: Sociological & Psychological Perspectives

## ■ Collective norms

- Social exchange
  - Shared backgrounds or experiences
  - Interpersonal or intergroup contact
- Procedural justice
  - Perceptions of fair and legitimate process
  - Shared information & voice

## ■ Cognitive Frames

- Social skill or “ability to induce cooperation among others (Fligstein, 2001)
- Use of imagery, rituals and symbols
- Ideological or socio-political frames



# Propositions

- Incidence and efficacy of normative and cognitive institutional supports
  - P1: Increasing in displaced agency  
Particularly
  - P2: in coordinated market economies
  - P3: where counterparties mutually dependent
  - P4: where counterparties share common identity
  - P5: when scope of counterparties expands
  - P6: when counterparties interact intensively
  - P7: when contractual hazards relatively small
  - P8: when contractual hazards mitigated

# Conclusion

- Much as agency theory excessively focuses attention on *ex ante* contractual design, transaction cost logic can divert attention from the question of HOW to instill cooperation necessary to mitigate residual contractual risks
  - Too much emphasis on opportunistic hold-up > collective shirking
  - Opportunistic behavior impacted not only by governance but also managerial behavior and processes
- Social sanction & cognitive dissonance critical governance tools
- Relational contracting and institutional supports thereof deserving of greater empirical analysis
  - Processes deployed in population of contracts
  - Key transactional, counterparty and network contingencies
- Strategy not just economizing or governing but also winning the hearts and minds of external stakeholders