



Séminaire interne du GREDEG

Séance du 4 avril 2019 – 14h à 15h30 - site Nice-Trotabas (Faculté de droit et de science politique) - Salle du conseil (5^{ème} étage)

Qu'est-ce que nos disciplines ont à dire sur le sens des circulations ?

En vue de la préparation des manifestations (session doctorale et journées internationales, pluridisciplinaires et comparées) organisées à Nice les 23 et 24 mai 2019 sur le thème : « Le sens des libertés économiques de circulation » (voir le [lien](#)), un second séminaire interne au GREDEG¹ est proposé sur le thème « Qu'est-ce que nos disciplines (Droit, Economie, Gestion, Sociologie) ont à dire sur le sens de leurs constructions (théories, modèles, pratiques) ? »

L'idée de ce second séminaire est de soumettre à la discussion informelle différents sujets et extraits de textes en rapport avec le thème général du sens des circulations.

Chaque sujet sera présenté en une dizaine de minutes.

Nous dédierons ensuite 1 heure à la discussion collective.

- Sujet 1 - Proposé par Irina Parachkévova-Racine : *La grande bascule des flux numériques*
- Sujet 2 - Proposé par Jean-Pierre Allegret : *Les transformations de la gouvernance mondiale sous l'influence de la globalisation*
- Sujet 3 - Proposé par Jean-Sylvestre Bergé : *Modèle économique et liberté de circulation*

Voir ci-après et en pj résumés des sujets et extraits de textes

¹ 1^{re} séance - 20 décembre 2018 - Gredeg, Sophia Antipolis



Sujet 1 - Proposé par Irina Parachkévova-Racine : La grande bascule des flux numériques

Résumé : Les progrès technologiques numériques – logiciels, cloud, AI, etc. – suivent aujourd’hui une courbe de croissance nettement supérieure à la capacité d’adaptation des sociétés humaines. Les flux numériques ont acquis une vitesse de circulation qui démultiplie l’interdépendance des marchés, des connaissances, des politiques publiques... La question se pose d’une remise à plat des systèmes et institutions classiques.

Extrait : Thomas L. Friedman, extrait de « Merci d’être en retard », Éd. Saint-Simon 2017 :

« Soit nous refusons le progrès, soit nous reconnaissons que l’humanité affronte un nouveau défi : la reconfiguration de nos systèmes sociaux et de nos institutions pour leur permettre de suivre le rythme (...) »

Tenter de ralentir la technologie pourrait paraître la solution la plus facile à notre inconfort devant le changement mais, l’humanité affrontant des problèmes environnementaux catastrophiques dont elle est à l’origine, si nous nous mettons la tête dans le sable, nous irons droit au mur. La plupart des solutions aux grands problèmes de la Planète viendront du progrès scientifique. (...)

Améliorer la capacité d’adaptation de l’humanité relève "à 90 % de l’optimisation de l’apprentissage", autrement dit, de l’application des moteurs de l’innovation technologique à notre société et à nos systèmes sociaux. Toutes les institutions, de l’office des brevets (qui s’est déjà beaucoup amélioré) aux agences de régulation, doivent devenir plus agiles, avoir la volonté d’expérimenter rapidement et d’apprendre de leurs erreurs. Au lieu d’espérer que les nouvelles réglementations résistent plusieurs décennies, les régulateurs doivent réévaluer en permanence le service qu’ils rendent à la société. Les universités tendent désormais de modifier leurs enseignements plus rapidement et plus souvent pour rester dans la course, jusqu’à inscrire la mention "valable jusqu’au" sur certains cursus. Le législateur doit faire de même. Il doit être aussi innovant que les innovateurs et agir à la vitesse de la loi de Moore ».

Sujet 2 - Proposé par Jean-Pierre Allegret : Les transformations de la gouvernance mondiale sous l’influence de la globalisation

Résumé : L’économie mondiale a connu dès le début des années 1980 un mouvement de bascule très important du point de vue de la gouvernance mondiale. Alors que les années post-1945 s’étaient caractérisées par une gouvernance largement conduite par les États, le mouvement de déréglementation s’est accompagné d’une montée en puissance des marchés. Celle-ci a induit une tension en termes de gouvernance dans la mesure où les acteurs privés tendent à dépasser les frontières politiques alors que la gouvernance a été historiquement structurée autour des États dont l’existence même est fondée sur la présence de frontières. La conséquence a été l’apparition d’un vide institutionnel. La construction d’une nouvelle architecture du système financier international s’est fondée sur un mode souple de gouvernance au sein duquel des acteurs étatiques et non-étatiques – groupes privés ou organisations non gouvernementales – coopèrent entre eux dans l’objectif de prévenir les crises financières et de créer des mécanismes efficaces de résolution des crises lorsque ces dernières se produisent.

Extrait de Marco Schäferhoff, Sabine Campe and Christopher Kaan (2009), "Transnational Public-Private Partnerships in International Relations: Making Sense of Concepts, Research Frameworks, and Results", International Studies Review, Vol. 11, n°3, p. 451-474

Transnational public-private partnerships are debated as hybrid governance forms through which the political authority of non-state actors has extended. Instead of influencing global governance through lobbying, non-state actors are directly involved in political steering, and co-govern along with state actors. Yet the phenomena labeled transnational public-private partnerships range from loose cooperation forms to legally binding contracts for the implementation of specific projects. Partnerships contribute to agenda setting, policy implementation and formulation, and deal with a range of issues, such as climate change, biodiversity protection, health, corporate social responsibility, and humanitarian aid (Reinicke/Deng 2000; Broadwater/Kaul 2005; Benner et al. 2005).⁴ Such being the case, it is difficult to describe the population of transnational PPPs. A data base including all PPPs has not been established so far. According to Broadwater and Kaul, there are at least 400 partnerships – compared to 50 in the 1980s–, addressing global challenges, such as the control of communicable diseases and the fight against climate change or poverty (Broadwater/Kaul 2005: 6). Yet, as highlighted by the authors, their data base is far from extensive, and has, for instance, not incorporated most of the roughly 300 „Type 2“ partnerships, which were launched at the World Summit on Sustainable Development (WSSD) to address the implementation of the WSSD principles (Hale/Mauzerall 2004; Andonova/Levy 2003). Several studies estimate that almost 100 partnerships emerged alone in the health sector in the last few years (Utting/Zammit 2006: 14; Carlson 2004), though there is one study that applies a narrow PPP definition, and therefore counts only 23 global health partnerships (Buse/Harmer 2007: 260).⁵ This variance illustrates the crucial fact that the term transnational public-private partnership is not clear-cut, and that, depending on the definition, different scholars find a different „universe“ of PPPs. As a commonly accepted definition of the term has not emerged yet, and as a clear understanding of the meaning of the term is lacking, the comparability of empirical studies is low. For this reason, we will discuss PPP definitions from the literature, and thereby deduce our own definition of transnational PPPs, which we regard as appropriate for future analytical research. As we discuss in the following, PPP definitions can be comprised of three criteria, namely, actors, goals, and provisions for cost-benefit sharing.

First, the bottom line of all definitions is that transnational public-private partnerships are continuing and relatively institutionalized transboundary interactions, which include public actors, such as governments and international organizations, and private actors. However, definitions differ on the term private actor. One group of authors opts for a broad understanding of this term, and includes both business and civil society organizations (Nelson 2002: 46; Utting/Zammit 2006: 1; Börzel/Risse 2005: 198). A second group applies a narrower definition, referring to for-profit organizations only, which means that the participation of a for-profit actor becomes a definitional criterion for transnational PPPs (Bull/McNeill 2007: 6; Buse/Harmer

2007: 259; Broadwater/Kaul 2005). While the latter group of authors usually fails to justify why the inclusion of for-profit actors is conceptualized as a definitional criterion for PPPs, a broad understanding of the term private actor is grounded in governance theory. From a theoretical perspective, it can be argued that it makes no difference whether for-profit or civil society organizations are involved in political steering processes of partnerships. As theorized in the governance debate, the traditional hierarchical relationship between government actors as 'subjects of control' and private actors as 'objects of control' is diminishing. Both for-profit and civil society organizations, which were formerly simply seen as rule-targets, are increasingly involved in the formulation and implementation of rules (Mayntz 2006: 15; Rhodes 1996: 660). Following this line of argument, we understand the term private actor in its broad sense. Along with state actors, partnerships can therefore be comprised of for-profit and/or civil society organizations.

The second criterion relates to the goals of transnational PPPs. The majority of studies argue that PPPs aim at the provision of public goods, while malevolent cooperation forms, such as terrorist networks or the mafia, are excluded from definitions for the simple reason that these networks are not delivering public goods but public bads (Beisheim et al. 2007: 327; Utting 2002).⁶ This concentration on public good provision corresponds with the broader perspective of governance research. Governance, as pointed out by Mayntz, refers to the various collective modes of regulating social matters, which means that it inherently entails a perspective on solving collective problems (Mayntz 2006: 15-16). In accordance with the literature, we would argue that transnational partnerships formally intend to deliver public goods. On the other hand, we reject the claim that PPPs have to be effective and successful in fulfilling this task, because definitions of partnerships become problematic when effectiveness standards become a definitional criterion. If an institution only qualifies as a partnership when it "is a mutually beneficial agreement" (Tesner 2000: 72) – meaning if it effectively furthers the interests of all participating actors –, failing partnerships are excluded by definition. Such definitions are troubling, because they constitute circular arguments, which impede research designs that aim at analyzing the effectiveness of transnational partnerships. This problem was already discussed in the research on international regimes fifteen years ago (Hasenclever et. al. 1997: 15). In the regime literature, one group of authors argued for a regime definition that includes the attribute of „rule effectiveness“. For a regime to exist, it was required that its members comply with its rules, at least to a minimal degree. Yet, these definitions were criticized for methodological reasons. As pointed out by Keohane, it is problematic to base the acknowledgement of a regime on the empirical observation of rule effectiveness, as "the usual order of scientific investigation, in which description, and descriptive inference, precede explanation" is inverted (Keohane 1993: 28). While research "would be for ever stuck at the first level: identifying the phenomenon to be studied (...), the key theoretical issue – the relationship, if any, between regimes and state behavior – would become a definitional question" (Keohane 1993: 28). In other words, if rule-effectiveness becomes a part of the definition, a regime – by definition – cannot be ineffective, which averts a non-tautological examination of a regimes' effectiveness. The same applies to

transnational partnerships. Studies that examine PPPs as catalysts for the provision of public goods have to separate ‘cause’ – a partnership between public and private actors, based on a formal agreement to provide public goods – and ‘effect’, the concrete provision of the public good. For this reason, we opt for a PPP definition that refers to the formal goal of providing public goods but that does not imply any effectiveness standards. Otherwise, failing partnerships are excluded by definition, and studies that aim to examine the effectiveness of partnerships are precluded. Instead of being part of the definition, we regard to what extent a partnership proves to be effective as a central research question.

Definitions of transnational partnerships can finally elaborate on how the responsibilities as well as the costs and benefits should be distributed among the participating actors. Such definitions can include broad statements about the responsibilities of actors, or very specific cost-sharing provisions. Nelson, for instance, states that the participating actors should “share risks, responsibilities, resources, competences and benefits” (Nelson 2002: 46). The World Bank asks “all parties [to] commit [...] resources (financial, technical or personal) to agreed activities, with a clear division of responsibilities and distinct accountabilities for achieving those goals” (cited in Tesner 2000: 71). The assertion that responsibilities and contributions should be shared among the partners, however, is a normative presumption, which should be avoided from the angle of analytical research. Rather, it is up to empirical research to study if and to what extent contributions are equitably shared among the different partners. For this reason, it is better to exclude statements about shared responsibilities from the definition. Additional to these broad statements, there are also definitions that refer to the concrete handling and management of projects, and feature specific ratios for cost-and-benefit sharing. The German development agency GTZ, for example, requires business partners to account for at least 50 percent of the project costs (GTZ 2005).⁷ Although such definitions make sense for practitioners, for academic purposes, it is not useful to apply too detailed definitions to the analysis of transnational PPPs. The institutional designs of the different arrangement are very diverse and cannot be captured with such detailed provisions on costs and benefits.

To sum up, transnational PPPs are continuous and relatively institutionalized transboundary interactions between public and private actors that formally strive for the provision of public goods, whereas private actors can be for-profit and/or civil society organizations. Measures of effectiveness or success are not part of the definition, because this excludes failing partnerships and averts research on the effectiveness of PPPs. To avoid normative stances, and because of the wide diversity of PPPs, the sharing of responsibilities as well as of costs and benefits is also excluded from the definition. We therefore define transnational public-private partnerships as *institutionalized transboundary interactions between public and private actors, which aim at the provision of public goods*.

Sujet 3 - Proposé par Jean-Sylvestre Bergé : Modèle économique et liberté de circulation

Résumé : Pour le juriste, le modèle économique peut se présenter comme une valeur partagée de nature à fonder l’existence de règles communes. Qu’en est-il de notre modèle néolibéral dominant et de l’affirmation de libertés de circulation dans différents espaces (espace national

(liberté d'entreprendre, d'aller et venir), espace international ou transnational de libre-échange (libre commerce), espace européen (libertés fondamentales de circulation), etc.) ? Quel lien peut-on effectivement établir entre l'approche libérale contemporaine (et ses critiques) et la liberté de circuler (et ses variables) ? Comment le juriste peut-il prendre part à ce type de discussion et ouvrir un dialogue avec les autres disciplines ?

Extrait de Hagar Kotef, *Movement and the Ordering of Freedom - On Liberal Governances of Mobility*, Duke University Press, 2015, p. 17 s.) :

"A Brief Genealogy

In the seventeenth and eighteenth century it was the denial of free movement that was - and was thought of as - the primary negation of liberty. This was probably a function of two interlaced limitations: the limited technologies of monarchical power (which were largely limited to imprisonment and execution), alongside a limited comprehension of the modes through which power operates or may operate. Accordingly, we have both a mode of power and a mode of thinking about power for which movement is quintessential. Thus, until the turn of the nineteenth century, liberty was largely seen as the freedom from unjustified external restraints that limited one's power of locomotion. While liberal freedom emerged as freedom of movement, while liberty is tied to movement when freedom is attached to the body, and while the movement of some groups (that we can identify as standing at the core of shifting liberal and neoliberal discourses) is still maximized and largely protected, the idea of freedom as movement has been for the more part sidelined in liberal thinking".
