



PUBLIC POLICY AND THE SWEDISH MODEL

FOR THE PUBLIC GOOD

HOW BUSINESS ACTORS BECOME "AGENTS OF THE STATE" IN THE COVID-19 CRISIS



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COVID-19 has placed society under imminent threat. Many analyses of the pandemic have focused on whether individual countries made the ‘right’ policy decisions in their attempts to mitigate the crisis, and Sweden has been portrayed as an extreme case due to its perceived soft approach. But to understand a crisis as multifaceted as the COVID-19 pandemic, we need to expand the analytical horizon beyond the state (1). Business actors also have a role to play in mitigating threats to society.

In addition to providing additional hands and resources, business has better knowledge of its clients than the state. And clients can be both potential culprits and vulnerable subjects during crises. In the aftermath of the 9/11 attacks and the ensuing War on Terror, states aimed to protect their citizens whilst simultaneously acknowledging that the threat might reside in their midst. In that situation, business actors, like banks and professional services providers, were called upon to surveil and control clients and their transactions in order to identify suspicious activities and illicit financial flows. They acted as Agents of the State to mitigate the threat of terrorism.

The threat of COVID-19 has again put pressure on business to take on such a role. Shops have been requested to control the flows of clients, offices have been told to send employees home, and industries have even halted their production altogether in order to stop the contagion. In effect, businesses have taken on the role of agents of the state. However, as research has shown (e.g. 2, 3, 4, 5), to make use of private business as agents of the state is no easy solution to the problem of keeping society safe. We need to be clear about the inherent friction involved.

A balancing of conflicting values and interests. First, business actors have their own interests, such as profit interest. Being an agent of the state often involves a complex balancing of conflicting values and interests. Business actors may even use the role of agent of the state to further their own interests rather than the public interest of mitigating the pandemic. We therefore need to consider: Which other interests are

at stake for the actors? How can we help agents strike a proper balance between conflicting interests?

A blurring of accountability and blame. Second, relying on private business actors as agents of the state means that issues of accountability become fuzzy around the edges. National security is a core responsibility of the state. A key issue here is that it becomes more difficult to identify the state as the ultimate principal when the public-private divide is crossed and businesses act as agents of the state. As a consequence, blame may be placed on the wrong party when external audiences hold states, or businesses, to account during the COVID-19 crisis. This raises important questions: For what are actors really accountable? Are we putting the blame where it belongs?

Action takers versus decision-makers. Third, as an agent of the state, business is charged with taking action. Still, the state is the principal, and thus the ultimate decision-maker. This situation causes friction if and when agents move into the domain of decision-making by deciding for themselves what needs to be done and how in order to combat the virus or other threats. And we must ask: How do we value being proactive versus being compliant? Where does decision-making end and action begin?

At the cross roads of multiple roles, accountabilities and interests

Enrolling business actors in the mitigation of a threat to society like COVID-19 is fraught with dilemmas. One complicating factor is that the role of agent of the state is not a mere change of role from one of agent to private principals to that of agent to public ones. Being an agent of the state adds a new role, and associated accountability relationships, to the ones already existing. This tends to put a strain on the preexisting relationships between business and other audiences.

For instance, to counter the threat of terrorism post-9/11, lawyers were called upon to gather information about their clients and their af-

fairs, and were ultimately required to report suspicions to the financial police. At the same time, lawyers' professional relationships entail client privilege and trust. The demands placed on lawyers as agent of the state thus clashed with professional requirements on good client relationships. Similarly, during the COVID-19 pandemic shops have been called upon to make customers stand in line outside, and to restrict the movements of shoppers inside, irrespective of the negative effects on business and the needs and wants of the customers.

Another example of a clash of interests is how some banks tasked with being proactive in the fight against money laundering/terrorism financing, ended up looking the other way when clients engaged in multiple suspicious transactions. Mitigating the threat of terrorism apparently did not align with the interest in increasing profits. Likewise, during the pandemic, some business actors have chosen to provide COVID-19 tests to paying customers, rather than groups prioritized by society such as health care workers. In short, questions of 'who is accountable – and for what' become important as the role of agent of the state involves inherent frictions and conflicts with other roles, accountabilities and interests. The question of who is to blame is also pertinent.

To be sure, businesses are accountable for their own decisions. However, as agents of the state, they are ultimately carrying out the will of the state. Yet, other stakeholders, like clients, may not be aware of when and why a business is operating as an agent of the state, and when it is operating as a market actor. To return to a previous example, one may reasonably ask whether COVID-19 tests are always provided to mitigate the threat of the virus, or whether they are sometimes sold primarily to make an extra buck. There is thus a risk that a business is unduly praised for its efforts when it is in fact operating as a market actor under the guise of being a responsible agent of the state.

Conversely, businesses may be unduly blamed by clients and other audiences for being successful in carrying out the role of agent of the state, if that role is not recognized as such. When banks engage in more and more vetting and monitoring, their clients may be upset at the in-

fringement of their right to privacy. When restaurants enforce social distancing recommendations, dinner guests may be upset at the lack of ambience. One way for business to handle this dilemma of conflicting loyalties is to provide a visible trail of its actions as an agent of the state. In relation to terrorism mitigation, banks produced leaflets for customers explaining why they had to ask so many invasive questions – the state had called upon them to do their duty! In the case of COVID-19, in-store signs replicating messages from the authorities on how clients should behave when shopping serve several purposes. They signal proactivity on behalf of the agents and inform customers what to do to mitigate contagion. But they also help spread a message of 'Please be informed that this is what public principals decided, not what we as agents came up with on our own!'

This hints at an additional complication. When business actors are called upon to be proactive agents of the state, it is a proactivity within bounds. The state is still the principal, and is the ultimate decision-maker. This causes friction between being proactive on the one hand, and being compliant and leaving decision-making to the principal, the state, on the other. Attempts from business to provide personal protective equipment (PPE) constitute an illustrative example of this problem. PPE has been scarce, but businesses cannot simply start to produce and provide PPE that has previously not been proven to adhere to appropriate standards. First, legitimate authorities must decide which PPE is acceptable; then, agents can supply the PPE to those in need.

Going forward: what next?

So, when all hands are called on deck, what insights can be drawn from previous research on agents of the state to better handle the COVID-19 crisis and its repercussions? A main take-away is that there will be conflicts of roles, accountabilities, and interests when business is enrolled as agents of the state. The state cannot presume that 'the business of business' disappears once business is called upon to help mitigate the threat of the disease. Business cannot presume that all kinds

of proactivity to stop the spread of the virus will be appreciated. Clients will be upset and shareholders will grumble. Going forward, we should bring these conflicts and frictions into the open. Only then can we figure out better ways to work around them, if not resolve them, before the next major crisis.

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