

Chapter I

Contemporary Issues of Public Administration – Globalisation

Public administration of a State

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PUBLIC ADMINISTRATION OF A STATE

1. What is public administration?

Public administration is as old as human civilization. Administer is an English word, which is originated from the Latin word 'ad' and 'ministrare'. It means to serve/ to manage; **administration** stands for an activity of different motion, choices, and organization of how they should be done to achieve a certain aim. **Public administration** is the same, just the aims to be achieved are common aims of the society decided by the commons and achieved by the commons with the leadership of a group elected by the commons.

Administrative law and public administrative law are often used as synonyms although, in strictu sensu, they are not the same. The 'administration' is a word with Latin origins meaning 'to serve', or 'to manage affairs'. In this sense, administration means the management of the affairs of an organization. Public administration means governmental administration, it is the accomplishment of politically determined objectives but public administrative law deals with the decision-making of the administrative units of government.

Administration and management are often used as synonyms although they are not the same: administration refers to a process of effectively influence an entire organization by formulation of plans, framing policies and setting objectives (decisive function) at the top level, while management states for a skill of getting the work done from others, thus put plans and policies into actions at the lower level (executive function). Administration, therefore, englobes management.

In history, the common aims, the notion of 'common' and the leader who had the right to decide on the priorities/aims (*public goals*) and on how to achieve these common aims has been constantly changing, so as the *organisation* which was settled to realise the background of execution, the *staff* who performed the tasks towards the common and the *material* and *procedural rules* that prescribed how it shall be carried out.

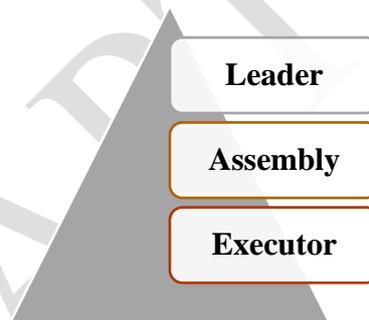


Public administration

1. Role of public administration (author)

2. A brief introduction to the history of public administration

Since people live in communities and get together to do something together to achieve an aim,¹ public administration exists. In primitive communal society, *in the time of cavemen*, this common aim that gets people together was connected to survival: to hunt together, to defend their community, to gather berries together, etc. Performing these common activities was a very basic form of public administration. A more developed form of organisation appeared when the people started to be divided (*the division of society*) according to their mission in the common activity:



2. Division of society (author)

- there were those, who were wise enough to draw up plans and alternatives (*assembly*);
- there were a few/only one (*leader*), who could decide upon common aims and could choose among the priorities and plans elaborated by the wider (and wiser) group of people and
- the largest number of the society was those who realised the common aims according to the wishes and executor (*executors*), who finally performed the activity to achieve the aim by following the orders of the leaders.

This separation of the classes of people was the result of a long development procedure and does not always mean a clear and impermeable line between the segments, but the ancient societies were built upon these levels.

For example, in Egypt: there was a leader (pharaoh) who was the ultimate source of decisions, priorities, there were a few people who helped him/her in this task (advisors, tax collectors, treasurers, army leaders of high rank), but most of the society was the executor, who in fact, did the job to achieve the aim. In a very simplified schedule: the pharaoh decided to build a

¹ You can read more in this topic in: Peter Kobra: The Logic of Caveman Management. *Public Administration Quarterly*, Vol. 15, No. 4. Winter, 1992, pp. 476-495.

pyramid, according to the highest advisors, he decided how and when to build it, his pages collected the money and organised the work according to the pharaoh's wishes and the workers put one stone on the other.

In history, rules were supported not only by their loyal nobles but by **professional advisors** who were the master of a certain issue (writing, financial knowledge) and often gained knowledge in other parts of the world and brought home the know-how (architecture medical issues, agricultural or military science, etc.). These positions around the rulers are the ancestors of the ministerial positions of today and the roots of professional administration and civil service.

Professionalism has always been important for civil service. In ancient China, an imperial exam based on merit was designed to select the best administrative officials for the state's bureaucracy. The Caroling Charles the Great sent his loyalist to learn abroad and also erected a public servant school in Aachen. In the 17-18th century, the Habsburg Maria Theresia and her son, II Joseph were famous for building up a professional State administration and invest in professional training. Besides, the clergy was always nearby and for centuries, clergymen were the ultimate sources of literacy, knowledge of sciences and education.

Sometimes people revolted against the ultimate rulers and expresses their negative sentiments against the practice that they have no world in deciding upon the common aims, which usually brought them nothing but suffering (wars, more taxes) and they are always just the ones who suffer from the decisions of the few rich ones at the top of society, and the executor of their wishes. The major common aims of these times were the defending of the territory, gaining new territories and everything the leader level of the society invented in the glory of the ruler (they lived in castles and ate fancy food, while most of the people were starving and lived poorly). In history, the strength of rulers always changed, and it depended on the supportive nobles and the relationship with the clergy. In the case of weak rules, the nobles had a great influence on decision-making, and vice versa: a strong rule could be independent of everyone (absolutism). The major change happened in the **Enlightenment Age**. Great thinkers appeared and started to spread the idea that the source of power is the people and not the ruler. The people have the right to decide upon the decisions they execute, and they have the right to elect the one who leads them. The great famine emphasized people's rebellion and the **Great French Revolution of 1789** opened a brand new chapter in the **history of public administration** that leads to the birth of the real public administrative law.

3. The new chapter after the end of absolutism and the birth of public administrative law

Strong rulers were independent and could do whatever they wanted. Although in history, they often had to get support to be able to stay in their position and let others have a say in decision-making and ensure them a better place in society than before. (Do you remember the **Magna Charta of 1215**? It was a document of such guarantees)

For a long time in history, there was one person who decided what the common aims and tasks are and how they would be organised, administration depended on the ruler and the law that governed it was also in the hands of the highest level of society.

With the abolishment of absolutism and the revolutions of Europe (**People's Spring or Spring of Nations**), people gained more power than ever: they are no more ridden lower part of society but active factors (**democracy**). The concept of **separation of powers** is linked to this change in society. People cannot practice their power directly, so they elect a group of people whom they feel to be competent and trustworthy to represent them and their interests (*assembly or*

parliament), and a leader (*government*) was either erected or the former monarch was prescribed but with restricted powers by the assembly. The government is then responsible for executing the decisions of the 'commons' represented by the assembly. To avoid the unfair practice of power, the *judicial branch* was settled to serve justice. Then, this decision-making body was responsible for the build-up of the organisation to serve the realisation of common aims. Therefore, the people could basically but indirectly decide upon their faith, the common aims, and their realisation. The elected representants could be changed in case of insufficiency as they shall perform their task according to predefined norms without the possibility of autocracy which was the previous regime's main feature. As for the functioning of public administration, it shall also be created according to predefined laws and regulation and shall perform its duties as it is prescribed by law. Law shall govern the society and not tyranny. ([rule of law](#)).

The traditional nature of public administration has been changing very rapidly in modern times. It is the consequence of the changing role of economy, society, culture and the new requirements of public administration. At the beginning of the 21st century, the public administration is expected to be not only capable of providing former basic functions (law and order) but it is expected to play some new roles. The number of common goals has increased with different areas to serve the well-being of society. Public administration has grown to be the biggest system of society with many tasks from the classical state functions (internal-external defence, economic tasks) to welfare state functions (education, cultural, medical and social benefits etc.). Today, the way that a State serves these interests (choosing of priorities) depends on its economic background and traditions.

There are states where education is a public task and free of charge from primary school to higher education, you pay for these from your taxes; there are states where you shall pay for higher education. Or, there are states where medical care is paid by taxes and available for all who contribute while other states maintain only a basic level of service from taxes and people are entitled to decide which private assurance system they choose and be part of it to get complex medical care, etc. If they do not like the system, at the next elections, they can vote for that party that promises a better system and in case of winning, they can establish a new type of social benefits system as a leader who chooses the priorities.

Public institutions (central, territorial and local organs) are also expected to play an initiative, regulative, and controlling role as well. In this way, the subsystem will be able to help the competitiveness of the economy, the improvement of society and the well-being of citizens.

4. Public administration and public administrative law in a democratic society nowadays

There is [no uniform and generally accepted definition](#); it depends on the examination's point of view.

Public administration is the realisation of common tasks (preparation of tasks and execution of tasks defined and regulated by the legislative) in a society by a specific organisation of authorities acting by public power (they have the right to enforce their decisions), unique civil service staff, and via special procedures governed by law. Public administration is the law in action; created and bound by an instrument of the law.

The **subordination of public administration to the law** is a requirement deriving from the rule of law.

The requirement of the subordination of the administrative activities to law means that public power possessing administrative bodies with public power, intervening into social

relationships, may make their decisions within the organizational framework of law, governed by procedural law and within the framework set by substantive law regulated by law in a foreseeable manner.

The **main task** of public administration, in general, is:

- *the preparation of legislation*: that is how the preferences of the government (leader) are ensured; alternatives are elaborated,
- *execution of legislation*: it ensures the realisation of the decisions taken by the legislator to formulate the society and the behaviours and by continuously verifying the success of their mission, they can prepare a new draft for legislation for better serving public aims in case of problems.

To perform these tasks, it is entitled to carry out **different types of activities**:

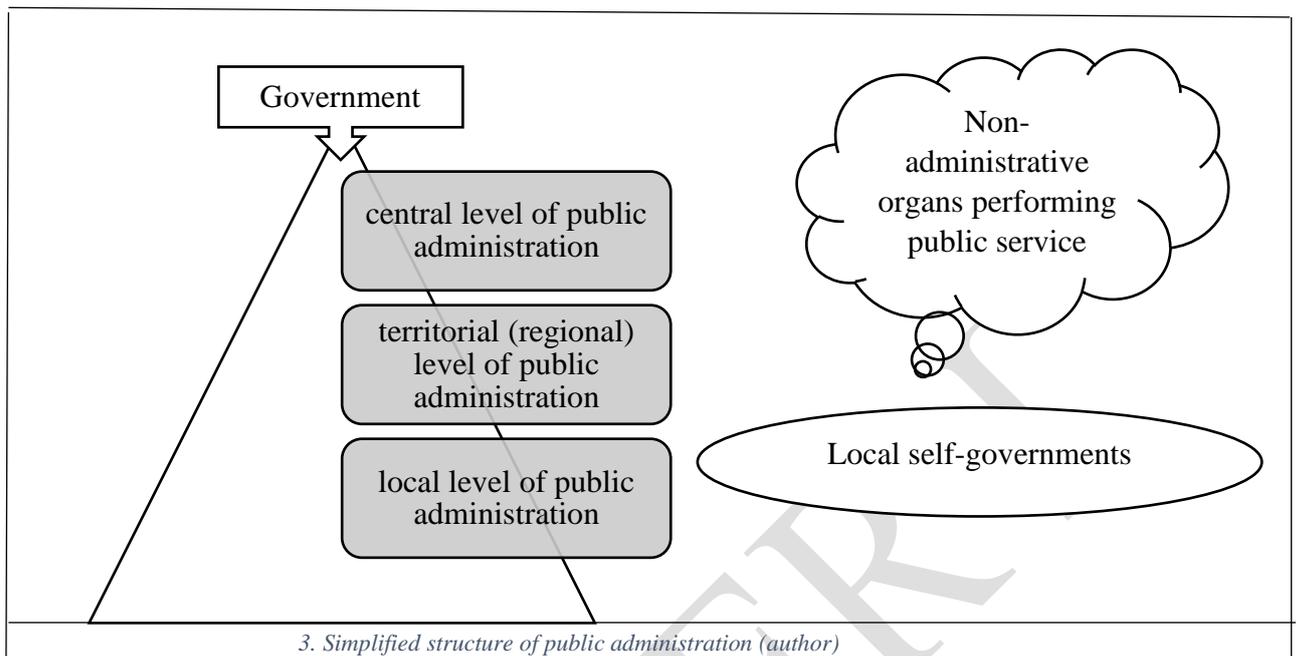
- it may establish *organs* and regulate its functioning to carry out tasks;
- it may produce *executive legal norms* (below legal acts of the parliament);
- it may act within *public power* (administrative authorities).

The first two is the prerogative of the highest level of administrative organs, while the latter features the territorial and local administrative level which are closer to the ultimate subjects of law, the individuals.

The convenience of the activity and functioning of public administration is supervised and controlled by the *judiciary*. It means that the legislative activity of public administration is supervised by competent State organs (mostly by constitutional courts) and the functioning and decisions issued by administrative authorities are subject to judicial review to ensure the conformity with legal norms (i.e. an individual has the right to submit a claim to court for a review of the individual decision of an administrative authority if the individual feels that the administration breached the law – material and/or procedural – while it formulated its decision pro or against the individual). In many states, there are alternative mechanisms, too, to fight against maladministration to disencumber courts in simpler cases and to help administrative power to follow a proper practice (i.e. the role of ombudsman; different conciliatory or mediation mechanisms).

The **structure of public administration** depends on historical traditions and current political choices of a State. State administration is hierarchical (thus via the direction of the upper level to down level organs, the government can ensure uniform application of law in every part of the country) and subdivided from central level (ministries, top-level organs of different tasks) to territorial (regional) and local level, these latter levels ensure task performance as deconcentrated units of a higher-level organ.

In most of the States, the local community has the right to handle their common tasks autonomously, without the interference of the government (*local self-government*). Their rights and level of autonomy also depend on the state 's tradition. There are also *non-administrative organs* that perform common tasks and contribute to them in different forms, however, they are not administrative organs (either not state-established organs, or they are established for different purposes and only a part of their activity is public service) It is also a choice of the State what is regulated under such category and what their status is. The relationship of such organs with the public administration and the government is also upon legislation and the interference of government into the freedom of these organs usually depends on the level of state financial support.



Public administrative law in a broad sense covers all legal norms that are related to public administration; therefore, the norms for

- the organisation of organs and authorities of public administration (organisational or structural law)
- the civil service (civil service law)
- the details of common goals (material law)
- the procedure that leads to the realisation of common tasks including procedural rights and obligations of the parties (procedural law)

are different parts of public administrative law making it the biggest part of public law.

LITERATURE

- Ewan FERLIE, Laurence E. LYNN Jr., and Christopher POLLITT (eds.): *The Oxford Handbook of Public Management*. 2007.
- Mary LISTON: Governments in Miniature: [The Rule of Law in the Administrative State](#). in: Colleen Flood - Lorne Sossin (eds.): *Administrative Law in Context*. Emond Montgomery Publishing, Toronto, 2008.

SIGNIFICANT DEFINITIONS

Administration	a process of effectively influence an entire organization by the formulation of plans, framing policies and setting objectives (decisive function) at the top level of the organisation
Management	skill of getting the work done from others, thus put plans and policies into actions at a lower level of an organisation
Rule of law	mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a non-arbitrary form of government and more generally prevents the arbitrary use of power
Public administration	is the realisation of common tasks in a society by a specific organisation of authorities acting by public power, unique civil service staff, and via special procedures governed by the law
Public administrative law	legal norms that are related to public administration; therefore, organisational or structural law, civil service law, material law, and procedural law

EXERCISES TO TEST YOUR KNOWLEDGE

1. Choose the statement to the terms!

Management	Administration

- a) lower-level activity
- b) decisive function
- c) systematic way of managing people and things within the organization

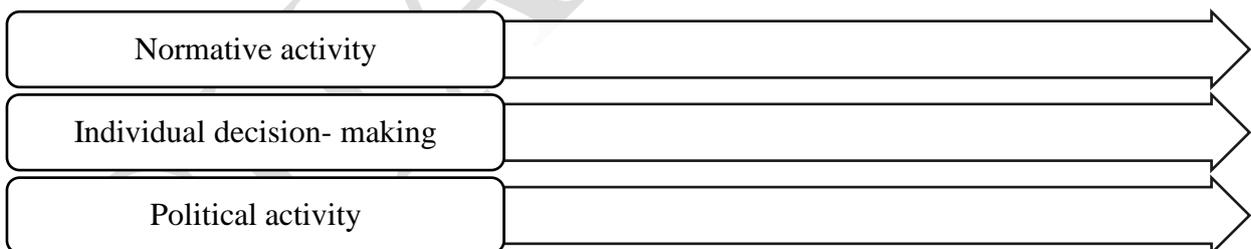
What defines the management and administration related to a)-b)-c) statements?

2. What influences the task of public administration and how?

Dynamical influencer	Static influencer

- a) economy of a State
- b) cultural traditions
- c) internal security challenges
- d) international relations
- e) geographical conditions

3. What does public administration do to determine the behaviour of persons? Find examples!



Which level of administration serves these activities?

TEST OF MULTIPLE CHOICES/QUIZ

1. is the formulation of plans, framing policies and setting objectives, while is putting plans and policies into actions.

- a) Administration; management
- b) Management; administration
- c) Public law; civil law

2. The public administration of a State is influenced and determined by social challenges, internal and external influences, and the economic background of the State.

- a) Yes, it is true as these circumstances have a strong influence on the tasks of public administration.
- b) No, public administration is stable and does not accommodate the needs of society.

3. Finish it with a true statement! The history of public administration ...

- a) is old as human civilisation.
- b) is the achievement of the Enlightenment Age.
- c) is dated from the establishment of the rule of law principle.

4. Finish it with a true statement! The rule of law is traditionally understood as the supremacy of the law in the regulatory legal acts system...

- a) and it has no further implication on public administration.
- b) and it is a legal doctrine that forms the fundamentals of constitutions but has not a direct impact on the administration.
- c) thus, it is a major value of a democratically functioning public administration and means the requirement of the subordination of the administrative activities to law.

5. Finish it with a true statement! Law of public administration...

- a) is the structural law of public administration.
- b) covers the structural and procedural law of public administration.
- c) covers the structural and procedural law of public administration and also includes the law of civil servants.

6. International relations of the State are not determinant for the functioning of public administration.

- a) True.
- b) False.

7. Traditions and geographical features of a State are not static factors of public administration.

- a) True.
- b) False.

8. Material rules for the determination of social relations are beyond the notion of public administration.

- a) True.
- b) False.

9. Public administration shall be determined by the rule of law to avoid the abuse of power.

- a) True.

b) False.

10. Public administration is built upon the same method in each country.

a) True.

b) False.

CHAPTER 1