

**The Legitimacy, Powers, Accountability
and Oversight of Public Administration
in a Democratic State**

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Defining Public Administration

Governments carry out their objectives with a variety of tools: policies, regulation, direct and indirect services to the public. However, invariably, all states will create an administrative apparatus - its public administration - to organize its activities, carry out specific responsibilities and ensure a continuity of the state infrastructure. In democratic states, the relationship between the public administration and its authorizing legislature varies dramatically. However, it is an essential element of democratic government that, no matter what legislative framework is put in place, the public administration of a state is subordinate to the elected bodies that govern it.

Public administration is, broadly speaking, the implementation of policy within a state framework. A good working definition is that public administration is the set of organizations, rules, and laws that ensure that the intentions of the elected legislature are carried out through their laws. It is also a means of ensuring the continuity and stability of the state through the embodiment of law in institutions that continue to exist even as one elected government is replaced by another through the democratic process of elections.

Public administration includes, but is not limited to, the formally created (usually in law) departments or ministries of government. As governments continue to seek improved ways to deliver services and reduce the cost of government, they can use third parties on a contracted basis, enter into a variety of partnership arrangements or create agencies with a great deal of independence. All of these ways of achieving the objectives of government should be considered as part of public administration. The reason for this is that, even when governments use third parties to deliver services or undertake state activities, they remain accountable for those activities to the public and, therefore, are concerned about the means of delivery, the use of public funds and the fairness with which they are delivered.

The principal and defining characteristics of public administration in the democratic context are:

- A set of laws or legally founded rules that create the structure of the administrative apparatus of the state.
- Delegation through law of specific powers and responsibilities to the administrative apparatus to carry on the work of government
- Continuing democratic supervision of administrative activities through the executive which directs activities within the public administration apparatus...
- Accountability vested in the political executive to the legislature.
- A non-political administrative apparatus that is subject to policy direction but not partisan.
- Oversight of the public administration apparatus through a variety of means:

- Accountability, through the executive, to the legislature,
- In some cases, forms of direct intervention by the legislature through such means as altering budget allotments or calling of public administrators to answer questions in the legislature or its committees,
- An array of redress or complaint mechanisms such as ombudsmen, appeal boards and public complaint boards,
- The requirement to report: various organizations within the public administration are required to report on their activities to the legislature or public on a regular basis,
- General oversight through an open media.
- Continuity of accountability and public oversight even when the administrative apparatus is at arms length from traditional government or contracted to independent third parties (private or voluntary groups).

Central to the concept of a democratically-derived public administration is the well established notion of a bureaucracy that is relatively free of political interference in its daily activities, that operates in an impartial and equitable fashion with respect to citizens but that, nonetheless, derives its legitimacy, power and policy direction from its political masters. In modern times, the relationship has become increasingly complex. For, in order to execute the policy direction of governments, public administrations are often vested with considerable power and discretion. Further, while a democratic model of governance clearly permits governments to provide policy direction and set budgetary and procedural limitations on their public administration, they must, in order to ensure fair treatment of citizens, avoid the excessive politicization of either appointments of public officials or direction of how public funds are spent to favour one group over another. In order to ensure that public administrations are both able to exercise their authorities and also are held to account for the powers delegated to them by the legislature, various accountability, oversight and redress mechanisms are in put in place. The objective is to achieve a balance of flexibility and restraint that ensure, in the end, democratic governance. Ultimately, in democratic societies, the legal authority must flow from the institutions of democratic government. In addition, democratic governments must answer for the actions of their public administrations and have to provide political oversight of them for that purpose.

Structure of the Paper

This paper will examine how states create their internal administrative apparatuses and how they then direct them, how they oversee them and how

they hold them to account. The paper will examine the structure of the public administration in three states, each with a different form of democratic government:

- France – with a mixed presidential and parliamentary system with responsibilities split between the President and the Prime Minister for executive and administrative functions,
- United States – with a congressional system in which executive and administrative functions are vested in the President but which heavily congressional involvement in administration, and
- Canada – with a Westminster system in which the executive and administrative functions are vested in the executive through the Prime Minister and Cabinet.

It will then discuss ongoing issues of maintaining effective public administrations in these democratic environments, most notably the issues of citizen access and redress as well as transparency.

Public Administration in France

With respect to state, government and civil service, France has developed a strong public sector in general and characteristics of public administration that are generally called Napoleonic or *etatist*. France has a strong central government in which the *haute fonction publique* forms powerful elite which governs and controls the entire country from Paris. This elite is part of both the political – legislative and presidential – apparatus of government as well as the administrative. In France government and administration are highly dominated by the legalistic perspective of constitutional and administrative law, so public administration is mainly inhabited by lawyers. France is the cradle of a separate state and administrative law. The resurrection in the early sixties of a separate study of public administration in France was thus primarily the formation of an identity *vis-à-vis* administrative law. In addition to the enormous influence of organisational sociologists such on the development of a French *science administrative*, the concept of *management public* played a large role.

The state is considered the keeper of *la volonté général*. The *haute fonctionnaire publique*, educated at one of the famous *hautes écoles* such as the *Ecole Nationale d'Administration (ENA)* and a member of one of the *grand corps* such as the *Conseil d'Etat* or the *Cours des Comptes*, not only dominates the French bureaucracy but politics as well - many top politicians are *Enarques* - and, via the *pantouflage*, also the management of large (state) corporations. Like everywhere else, francophone public administration involves supporting elected officials in the development of sound public policy and delivering quality services to citizens. While no claim can be made to any exclusivity, it is fair to say however, that the

French tradition is characterized by a strong presence of the state in all aspect of social life, often referred to as “L’État-providence”. Inspired by social-democratic principles, French public administrations tend to be highly centralized bureaucracies providing top-down direction to economic and social activities, relying heavily on regulatory mechanisms and without much regard for market forces. State-owned institutions are commonplace and public servants are generally unionized and quite militant when it comes to protecting their acquired rights and privileges.

Only recently has this close association of the state and its administration begun to change. In the managerial reforms which were introduced in French government by the *circulaire Rocard* of 1989, three reforms were emphasized which displayed great similarity with management techniques of businesses:

- Introducing notions of quality of service
- Service standards, and
- Responsibility centres.

The first concerns a technique from Japan and became popular in Western businesses as Total Quality Management. The service delivery projects were intended to provide more autonomy to the top management of executive agencies, linked with a more concise formulation of the mission, the goals and the tasks of the service. The third reform consisted of management contracts between central government and the executive agency in which the tasks and means were specified. The goals in these contracts primarily concerned the improvement of client orientation, the shortening of waiting periods, the reception of clients.

Although these are unmistakably examples of the previous definition of new public management, we will have to be aware of the specific societal and state context of France.

In the 1960s, the *Institut de Management Public* was created in Paris. Under the influence of the American (business administration) management and organisation sciences, concepts such as *gestion publique* and *management public* were introduced to government as an approach differing from the juridical. Although the influence of business-like thinking is undeniable, in France these concepts mean more than only effectiveness, efficiency, productivity. In the French scientific body of knowledge on *management public*, broader concepts such as public governance and the legitimacy of the state play a major role, concepts that one will not find in the usual American literature on management. One should not forget that the French government in the 1960 and 1970s experienced a period of growth of the welfare state. The current context of public sector retrenchments, budget cuts and the necessity to 'work better and cost less' that has led to the rise of managerial thinking in the public sector, was

lacking in France of 20 years ago. Business-economic thinking in terms of effectiveness and efficiency did not dominate. This reflects the public administration context of France, one in which the state apparatus is complex and pervasive in daily life.

In the 1980s, France launched major government-wide and sectoral reforms of its public administration. The purpose of these reforms was to modernize and decentralize government, without sacrificing the state's central role as an integrating and regulating force in civil society.

Initial efforts at reform involved the large-scale decentralization of power and responsibility from Paris to the regions, departments and communes. This decentralization was accompanied by a huge redeployment of public servants, who now answered to local elected authorities. In 1994, France adopted a charter to ensure citizen-oriented public services. The charter created various mechanisms to evaluate the quality of services, make them more effective and involve citizens in their design.

In 1995, the newly elected government of Alain Juppé continued in this vein by announcing the following priorities:

- clarify the objectives of the state and the scope of public services;
- give greater consideration to citizens' needs and expectations;
- change the central government, which makes too many laws and is ineffective as a legislator;
- delegate responsibility; and
- reform public management.

The Jospin government adhered to the intent of these objectives when it piloted departmental activity reports in February 2000 as means of reporting to and communicating with citizens. The interdepartmental committee for government reform (Comité interministériel pour la réforme de l'État – CIRE) has since put this practice into widespread use and set three priorities for itself:

- meet citizens' expectations;
- manage in a transparent and effective manner; and
- decentralize decision making.

In spite of sporadic resistance, efforts to modernize the French public sector are proceeding apace, supported by a strong political will, continuity and a solid framework. Departmental reform strategies are the most recent initiative in this process.

Although France's reforms were driven by economic imperatives, as in other countries, they differ from neo-liberal trends in that they do not challenge

France's firm social-democratic foundations. Most observers feel that they have had positive results.

Public Administration in Canada

Canadian public administration is characterized by a high degree of professionalism and separation from the political process. With respect to all levels of government, all levels of the public service are professional and permanent employees who do not change with the government. While minor instances of patronage continue to exist and are treated with public controversy, the long-standing independence of public services in Canada is strong. Both the federal and provincial governments have similar arrangements for creating their public administrations. They are creatures of both the executive and legislative arms, but with control and accountability flowing from the public administration to the executive. In other words, the staff of the public administration organizations report to the executive (in the Canadian context, this would be the Prime Minister and the Cabinet). It is the executive which is accountable to the legislature. However, many of the instruments through which the public administration is created and regulated are in law created by the legislature. The legislature (Parliament in the federal context and Provincial Legislatures in the provincial context) also maintains a degree of oversight of the public administration through committee review of individual departmental budget plans and on the planning documents of the Minister on a regular basis.

There are various statutes and other instruments of public law dealing with the structure and functioning of the State that are generally thought of, taught and written about, as stand-alone and disparate. The most well known among these are:

- The Canada **Elections Act** and the other statutes relating to the electoral system;
- The **Parliament of Canada Act** and the related legal / Parliamentary instruments dealing with the Senate and the House of Commons as parts of the Legislative Branch of Government;
- The establishing and granting mandates to departments and agencies of government, as well as the ones creating ministerial and deputy-ministerial positions in the Executive Branch of Government;
- The **Public Service Employment Act** and related statutes and statutory instruments creating the public service of Canada and determining the principles according to which it functions;
- The **Financial Administration Act**, the **Access to Information Act**, as well as other legal instruments dealing with the management of public affairs; and
- The **Supreme Court Act** and other like statutes dealing with the establishment and functioning of the Judicial Branch of Government.

Far from being stand-alone and disparate instruments, the statutes enumerated here and the many other similar ones dealing with governing, constitute a comprehensive and, even more importantly, a coherent body of law which, taken together, merit the designation of Law of Public Institutions and Administration. This body of law is in many respects related to the current focuses of attention in constitutional law and administrative law, but for the purposes of the study of the structure and the functioning of the State, it can be distinguished from those domains.

Oversight

While maintaining the principle of ministerial accountability for public administration in the Canadian federal system, there are a number of ways in which the legislature maintains oversight of the public administration. These mechanisms also reflect the Westminster model of ministerial accountability to Parliament. The principle means of democratic oversight of the public administration are:

1. **Parliamentary Committees:** Committees of parliamentarians are assigned to specific committees with subject-matter oversight of government operations. These committees have no authority over the administration of these but can call witnesses on matters related to the department's activities. They also review their annual program and spending plans of departments under their jurisdiction with the Minister appearing to answer questions.
2. **Legislative Auditor:** The Auditor General is an officer of Parliament, not of the executive, who examines departmental spending, and programs and reports directly to Parliament. This office is an important source of information to parliamentarians.

Public Administration in the United States

The public administration of the United States is clearly part of the Executive Branch. Conventionally, civil servants are regarded as permanent employees of federal government and its agencies, even though this group is far from encompassing the whole of the American federal bureaucracy. For instance, Defense employees are treated separately, but their legitimacy is set in federal law.

The main law to create the public administration is the Civil Service Act (Pendleton Act) of 1883. This was designed to create a non-partisan, patronage-free central bureaucracy for the first time. However, the federal American system has one characteristic that is unique relative to most democratic public administrations: higher level civil servants positions within government departments and agencies remain appointees of the incumbent President. They are appointed by the in-coming President and leave office when he does. In some views this is a patronage-driven anachronism. However, it also reflects a

strong culture within the United States that is highly suspicious of public administration or bureaucracy in general. It is generally seen in the American context as a means to maintain adequate political control over the public administration apparatus. In addition, these appointments are subject to the approval of the legislature through the Senate.

The organization of the career civil service element of the public administration in terms of structure and recruitment is governed by the Office of Personnel and Management (OPM) which was created in 1978 to replace the Civil Service Commission. A further body concerned with the administration of the bureaucracy is the Merit Protection Board which regulates and adjudicates on promotions and dismissals from the service.

Another central agency of the American system is the Office of Budget and Management (OBM) which oversees the budget process of the entire public administration and government as a whole. It also plays a central role in ensuring the sound management of public funds and in ensuring that rules are adhered to within the public administration.

The American system is highly decentralized with respect to the legal foundations for public administration entities. For instance, individual pieces of legislation will create agencies within departments, reporting to the Secretary or political head of that department. Often, these agencies will be established with considerable independence of the department of which they are a part. For example, the Federal Bureau of Investigations (FBI) is created under separate legislation from that of the Department of Justice of which it is a part. There is also a Congressional sub-committee that oversees the FBI, enabled to call officials as witnesses in their own right and not just the Secretary of Justice. These reporting relationships and their tenuous nature often lead to confusion within the American system as to who is responsible for what. They also reflect an approach to democratic oversight that is pervasive; one best characterized as multi-faceted, very open and highly politicized.

The American system is also characterized by the legislative creation of agencies independent of the central framework of departments. The first such body was the Interstate Commerce Commission in 1887 to regulate railway construction which was frequently promoted by state and local government. These agencies operate with considerable independence of the executive arm of government and add to the mix of complexity that characterized American public administration.

Like many other countries, the American public administration system also encompasses the creation in law of public corporations to run state-run business-like operations.

Oversight

Issues Trends and Developments

Public Sector Reforms

Market-driven administrative reform has been the leitmotif of profound, perhaps even unprecedented, public sector reform across the Western world for the past decade or so. It is indicative that even in Sweden (the place of writing), a country that has been fairly slow in adopting this model of administrative reform, authorities such as the Migration Board and the Prison and Probation Board nowadays define their clients as “customers.”¹ In examining the impact of these reforms, it is useful to note how, even in a democratic country with a strong traditional state-oriented public administration as France, efforts are underway to continue to modernize the state apparatus along the following lines:

- Greater use of alternative systems of delivering services such as contracting out, use of private providers, alternative government structures,
- Greater flexibility in the hiring practices while retaining a non-political public service
- Great accountability in reporting to the legislature and the public on results
- A stronger focus on result-based management
- Greater use of technology both within the administration and to serve the public.

Transparency and Redress

All modern public administrations are subject to some form of law that permits access to information about the activities of the administration and to information held about individuals. There is a tension within all administrations between the need for openness and the need to ensure that information is protected either for uses of the state or to protect the individuals named in it. As well, even within the democratic context, there is no clear answer as to what is the right amount of openness to the public. All public administrations will tend towards the protection of information over sharing it. Therefore, in the democratic context, this tension will be seen in conflict between the officials within the public administration, often supported by their political masters, as the official and unofficial bodies and groups seeking greater openness.

Most democratic governments put in place some form of ombudsman structure. This enables citizens to make formal complaints about some aspect of public administration and, if there is merit in the case, seek some form of correction or redress. It is notable that, in all the three examples cited here, there is no one single ombudsman office. Rather, there are many complaints bodies associated with specific public administration activities such as police, hospitals or social assistance. This reflects the scope and size of these public administrations. They are very complex and one single office may not have the competence to respond on a cross-governmental basis.

Legislative Oversight – the Role of the Auditors

In varying degrees, all democratic public administrations will be subject to external audit review. In the case of Canada, this is the Auditor General, who is an agent of Parliament, not the executive. In the United States, is the General Administrative Office of the Congress which oversees major studies of activities of the public service. In France, reflecting the more corporatist approach, major audit functions are carried out by the Inspectorate of the Ministry of Finance. In each instance, it is body external to the particular unit or department of the public administration that carries out these audits. Increasingly, such audits do not confine themselves to financial probity, but rather focus more broadly on compliance with approved practice and value for money spent on the programs.

ⁱ *Dismantling Democratic States*. By Ezra Suleiman. Princeton: Princeton University Press, 2003