



Public Administration as Representative Bureaucracy

by Mirko Pečarič

Abstract

In the presence of more and all wide-encompassing, global problems it is obvious that states cannot be omnipotent institutions. Important are all, even small efforts for the fulfilment of common good. These tiny ingredients of democracy are present also in the public administrations as the most important repository of governmental knowledge. Governmental actions should be enhanced also by people's cooperation as the only way by which knowledge can be democratically enhanced; states need new institutional arrangements that will reflect a higher level of legitimacy proportionately with changes in their environments. In the present time this can be the fastest approached by emphasising the values and principles of public service. Public servants are not only experts, but also citizens for whom they provide public goods and services. Their effort is many times overlooked, although their ability to accommodate to changes is one of the most important things of a state's prosper or decline.

1. Introduction

In the light of economic and other problems, states are confronted with growing public expectations. The latter grouped with the interests, beliefs and actions are reflected in a nation's culture that has on its positive/negative end either prosperity or corruption, and between them a large set of their combinations. A question of deliberation is therefore how (un) satisfied interests of these expecting individuals be balanced with the public interest, how can these two be connected, if all interests cannot be fully achieved? The New Public Management,¹ New Public Governance,² Neo-Weberian state,³ Catalytic Governance⁴ and other past/future ideas about public administration (PA) – without being connected with some higher and/or common linking chain – are/will be only different perspectives or glasses with different colour lenses about a proper work of public institutions that do not last long enough to make effective and long-lasting changes. As '[t]he study of public administration is an umbrella study...[and] an interdisciplinary approach is much more appropriate'⁵ this paper will try to retain the interdisciplinary approach, while the "umbrella" will be given into the hands of public servants, who will open and close it *vis-à-vis* different circumstances. This paper's argument is that institutions have usually as much success as mostly government *officials* are successful in achieving the balance between different ideas. To Foucault power acts by laying' down the rule: power hold on and is maintained...through the act of discourse that creates, from the very fact that it is articulated, a rule of law. It speaks, and that is the rule. The pure form of power resides in

¹ Christopher Hood, 'A Public Management for All Seasons?' (1991) 69 *Public Administration* 3; Christopher Hood, *The Art of the State: Culture, Rhetoric, and Public Management* (Oxford University Press 1998).

² Stephen P Osborne, *The New Public Governance: Emerging Perspectives on the Theory and Practice of Public Governance* (Routledge 2010).

³ Edoardo Ongaro, *Public Management Reform and Modernization: Trajectories of Administrative Change in Italy, France, Greece, Portugal and Spain* (Edward Elgar Pub 2010).

⁴ Patricia Meredith, Steven Rosell and Ged R Davis, *Catalytic Governance: Leading Change in the Information Age* (Reprint edition, Rotman-UTP Publishing 2016).

⁵ Jos Raadschelders and Eran Vigoda-Gadot, *Global Dimensions of Public Administration and Governance*: (1 edition, Jossey-Bass 2015) 6.

the function of the legislator'.⁶ Due to the fact that most of the draft laws are prepared by PAs – Foucault's focus on legislator should be shifted to public servants. Their apparent neutrality and political invisibility hides their techniques of power: states still mostly operate in the stable orbits of classical separation of powers and "democratic" ruling over the "ignorant people of the 18th century" along with the (more and more global and intertwined) ideas of 21st century that cannot be reflected in the classical constitutional mechanisms. The multi centenary implementation of rules that has with an emergence of the principle of legality included also the principle of equality, is still of the utmost importance, but has created – under the umbrella of undisputable legal principles – also a formally equal treatment of individuals in areas that do not fit into these principles (a tunnel vision), where rights can be effectively enabled with *different* treatment. The never-ending estimation, persuasion and advocacy of differences is the most important method for the validity or for the redefinition of principles. Public servants are committed to the public interest and civic duty with compassion, and sometimes with self-sacrifice; this kind of description can be found in public service motivation that refers 'to individual motives that are largely, but not exclusively, altruistic and are grounded in public institutions'.⁷ We agree that bureaucracy 'seems to depend on two rather personal characteristics of people. The first is civil servants' internalized sense of their proper role...[and] the second component of a properly functioning system of administrative accountability is the population served by the civil service'.⁸ Regulation of society starts with power, information and knowledge in PAs. If there are possibilities to improve states, then they will be in the latter. In complex and globally oriented situations the ideas of integration and cooperation are gaining in importance. Innovations are high on agendas,⁹ while the old bureaucratic (although with the prefix "Neo"-) working models are still carried forward: 'distinctiveness is likely to persist even in the face of the pressures for convergence',¹⁰ because '[r]esults are often the "elephant in the room" for management reforms'.¹¹ Different models and expectations are often enhanced with a lot of the internal and external oversight agencies (e.g. Ombudsman, Auditor General, Integrity officers, Information commissioners, Parliamentary Commissions, Personal Data Protection) established to control public servants' doings. It is no surprise to find occasions in which public servants avoid or even refuse to do what is essentially expected from them, *i.e.* to decide, act, propose, defend, etc., or simply to be responsible public servants, but there is the undisputable fact that these servants are here to stay. They in the majority of cases run the states' systems, so it is very relevant what these people are (not) doing right now.

The paper focuses on the *individual* in contemporary society (on the personal capacities and needs, and to that related opportunities to influence state's actions); it seems a person with his/her competences/skills is still (and will be) a common denominator of all theories. The paper is an attempt to enlighten the fundamental human right of participation in the management of public affairs to achieve a real *joie de vivre* in the public life, although this joy depends very much on public servants; they will probably change/implement new systems of public participation. In the following sections through the analysis of individuals, public servants, governments and their relations directions will be given that could upgrade PAs with the active, characterful and representative bureaucracy. Public servants can lead other citizens to a real active citizenry that will put the human right to participate in the public life on a new level. The above-mentioned analysis will begin with an individual's position in society after which new managerial positions for government intervention will be presented to arrive to the main question, *i.e.* is management by the managed a wish or a myth. We will go into this subject with the non-stop present argument that the majority of primarily and secondary legislation is still and will probably be for years to come mostly prepared by public servants.

⁶ Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (Reissue edition, Vintage Books 1978) 83.

⁷ James L Perry and Annie Honddeghem (eds), *Motivation in Public Management: The Call of Public Service* (Oxford University Press 2008) 6.

⁸ B Guy Peters, *The Politics of Bureaucracy* (6 edition, Routledge 2009) 337.

⁹ V Bekkers, J Edelenbos and B Steijn, *Innovation in the Public Sector*: (2011 edition, Palgrave Macmillan 2011); P Valkama, S Bailey and A Anttiroiko, *Organizational Innovation in Public Services*: (2013 edition, Palgrave Macmillan 2013).

¹⁰ M Painter and B Peters, *Tradition and Public Administration* (2010 edition, Palgrave Macmillan 2010) 3.

¹¹ Christopher Pollitt and Geert Bouckaert, *Public Management Reform: A Comparative Analysis - New Public Management, Governance, and the Neo-Weberian State* (3 edition, Oxford University Press 2011) 214.

2. A position of an individual in society

An individual has his/her own objectives, but s/he is also by nature a social being, who (in his/her best version) wants goods for a whole society. The individual becomes the holder of rights and obligations only within a community; only in the latter it can be recognized as a person¹² and because of which it gains legal capacity. This belief emerged at the forefront and ultimately turned into a formal force at the turn of the 18th into 19th and most of the 20th century with the concept of legal and then also with the welfare state, where the state did not give merciful benefices to the individual any more, but it could from that time on, demand them as personal rights. Individualism has been reflected in state's respect for human rights that gain their content from the society's point of view.¹³ Such mostly individualistic position has prevailed to the recent global economic crisis that strengthened a belief in the market inadequacy and inability of states in addressing market failures and other public problems. A relationship between the state and the market is not only about the economic relationship; there is a number of other factors, including an individual, who is not only a passive recipient of rights, but also an active element of community. Apart from (a few) inspired individuals and groups that have strived for the greater good of society as a whole, demands for public benefits have been so far mainly expressed in the states' fundamental tasks. The so-called social state is still "under the attack" of privatization and liberalization, and should *apparently* become less monopolistic institution that slowly transforms into some modern form which nobody knows. On the other hand states are faced with the growing fragmentations (also because of privatization and liberalization), interdependencies, complexity and ideas that cannot be managed in a style of *all for all*¹⁴ (it seems that the famous dictum of Three Musketeers "one for all, all for one" gradually became just welfarian "one (state) for all (society)"). as was present in the utilitarian welfare economics. There are also an increasing number of national (the major economic and trading companies), transnational, global and informal elements where states need more *cooperation* (as in the Syrian refugee crisis) not privatization. This could lead states back in the more interventionist forms that liberals view with suspicion, while it certainly bring them back in Foucault's notion of "governmentality", where sovereignty is replaced with 'the finality of government [that] resides in the things it manages and...directs; the instruments of governments, instead of being laws, now come to be a range of multiform tactics'.¹⁵

The development of technology that diminishes a need for collective efforts to do things and provision of benefits without an adequate contra-contribution has made people more self-interested, but also more easily fooled. To this condition added also New Public Management with its focus towards the individual as a consumer, who merely expects and gives nothing in return. Situations, where an individual hesitates between the individual and common goals, represent an ancient Aristotelian social dilemma,¹⁶ which can be resolved in several ways: an individual satisfies his desire at the expense of others,¹⁷ others are not affected,¹⁸ or may even benefit from it.¹⁹ If most of us agree that each individual counts, so far it has been so far dealt by a state only indirectly by a state's main tasks that are still primarily targeted at the market to ensure prosperity, security and peace. Many

¹² This is already evident in ancient Greece and Rome in institute of expulsion from the state and on the other hand of asylum, which was for the individual the same as death or preservation of life.

¹³ Public interest should be considered as a "human" right enjoyed by the people, the community as a whole, which is seen as their weighting in the conflict of values in assessing the constitutionality and legality by constitutional or supreme courts of states.

¹⁴ Alexandre Dumas, *The Three Musketeers* (CreateSpace Independent Publishing Platform 2014).

¹⁵ Michel Foucault, *Power (The Essential Works of Foucault, 1954-1984)* (James D Faubion ed, Robert Hurley tr, 1 edition, The New Press 2001) 211.

¹⁶ There is a further drawback to common ownership: the greater the number of owners, the less the respect for the property. People are much more careful of their own possessions than of those communally owned; they exercise care over public property only in so far as they are personally affected. Other reasons apart, the thought that someone else is looking after it tends to make them careless of it Aristotle, *Politics* (CDC Reeve tr, Cambridge University Press 1998) 58.

¹⁷ Such actions are admissible, if other individuals agree with that (under the condition that there is no violation of any mandatory rules).

¹⁸ It is about reaching consensus in the context of civil law.

¹⁹ In this case, there may be an opposite situation from the first case, for the civil action, where both parties have benefit, for social relationship where the benefit outside of legal standards is reflected in other benefits (e.g. campaign for voluntary actions in beneficial works for society), or for administrative-legal relationship, where the individual performs a useful public work, which is also recognized as such by legal norms (e.g. the implementation of certain public services).

individuals are still having only a dilemma which social rights/benefits could be demanded from the state. The notion of welfare state that has started as the post New Deal correction of market failure (with the enhanced classical command and control regulation) has gained its second emanation in the protection of human rights, but has somehow along the higher abstract notion of humanity – with the help of technology because of which people do not need to ask other people for help – caused a practical decline of interest for the community/state's affairs.

On the other hand it is far from 'obvious that for a particular individual, his or her maximum return is obtained by making no contribution - that is, freeriding...the contribution of the individual in large groups may be absolutely or practically of no significance'.²⁰ If this was true, people would not vote at elections, would not help strangers, fight for homeland security and the like. But they *do*. The individual is not only selfish; it is also an altruist, is not directed only to himself/herself, but also to others, to a community.²¹ In all cases a goal's content *i.e. information* that a dilemma holds and a person's *will* that follows, is the most important. The abstract notions of state and persons are present in reality only as their *concretisations*. The unionization of weak has been the cause for most (revolutionary) changes in government regulation, and this is no less true in modern times.²² Despite the growing potentials of information technology (that has to a certain extent removed a person from the other person), a human is still *homo politicos*,²³ and can develop only in society.²⁴ The welfare state cannot survive only as the right but must have also the duty on its other side; it is the Janus's coin of the legal state and as such is still many times overlooked (*e.g.* compensation for socially disadvantaged without a duty to do something in return in the form of public works or other kinds of aid to others). A community is more than a sum of individuals, and the latter are always more than its part; equality does not form a community, though it is its foundation: it is only a starting point. There must be also a value of *care* for (any) fellow man. This notion is also present in the idea of human that is *humane*. As an individual can produce this "surplus" that is reflected in the leniency and assistance to others, a community of people forms this surplus in the notion of the public interest. This *humane surplus* is found in Rawls's original position (in which people could choose a society in which they will be born without knowing at the moment of choice what would be their abilities, preferences and interests)²⁵ refined with the difference principle (social and economic inequalities are to be arranged so that they are to be of the greatest benefit to the least-advantaged members of society),²⁶ in Dworkin's solution of ethical question about the good life that depends on the fairness of political decisions of community,²⁷ and in the lines of many other authors and their specific (heroic) acts. If Rawls sees justice in overlapping consensus as an agreement on justice as fairness between citizens who hold different views (or conceptions of the good), where principal task of government is to secure and distribute fairly liberties and economic resources that individuals need to lead their freely chosen lives, Dworkin stresses also an *active* component not only of state (as Rawls), but of each individual, who gives his contribution to the community:

²⁰ Leon Felkins, 'An Introduction to the Theory of Social Dilemmas' (2001) <<http://perspicuity.net/sd/sd-1.html>> accessed 3 May 2016.

²¹ Some claim that we should move from "public interest" to "good" public administration (both, NPM and GPA is being customer focused); "sound" public administration give primary role of the public servant in helping citizens to articulate and meet their shared interests. New Public Service has orientation towards a citizen (in this it is similar to Rawls's overlapping consensus) Janet V Denhardt and Robert B Denhardt, *The New Public Service: Serving, Not Steering* (3 edition, Routledge 2011).; a "collaborative" PA stresses the idea of responsiveness with the significance of citizen action and participation Eran Vigoda, 'From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration' (2002) 62 *Public Administration Review* 527., where citizens influence on policy through their participation in the execution of public programs Gordon P Whitaker, 'Coproduction: Citizen Participation in Service Delivery' (1980) 40 *Public Administration Review* 240..

²² I think about social boiling in the Arab countries and with that associated domino effect in Tunisia, Egypt and Libya.

²³ Aristotle (n 16).

²⁴ The individual is able to think, feel, strive, and work by himself; but he depends so much upon society-in his physical, intellectual, and emotional existence-that it is impossible to think of him, or to understand him, outside the framework of society Albert Einstein, *Ideas and Opinions* (Carl Seelig ed, 6 edition, Crown Publishers, Inc 1960) 154.

²⁵ John Rawls, *A Theory of Justice*: (Belknap Press 2005).

²⁶ *ibid.*

²⁷ 'What Is a Good Life?' (*The New York Review of Books*, 2011)< <http://www.nybooks.com/articles/2011/02/10/what-good-life/>> accessed 3 May 2016.

“[t]o act justly on general is not the thing of passivity; it means not only that we don’t cheat, but to do everything we can to reduce the injustices...A just society is a prerequisite of life that respects both ideals [of the private interest and interest of the community]. Therefore, our private lives...closely parasites on our joint success in politics. The political community has the ethical primacy over our individual lives”.²⁸

Between the classical liberalism and conservatism an individual is also community-oriented, the individual who wants its own well being to reconcile with the welfare of other participants in a way that not only others or society as a whole would not be injured, but that could all benefit from his actions. *There is a value in each individual, and each of us counts*. This is not the humanistic statement *per se*, but it is valued as the extraction of all nations (every person is a living element of million-year-old human history). Every additional hand or thought counts; help to others is regained in being better people and in having better information. Is it time for an orientation that is different from collectivism and individualism? It can be found in the idea of communitarianism as an ‘attempt to bring out of the sociology, economy and political science [to] re-do the moral sciences with the help of contextualism where the formally differentiated, partial systemic rationalities of modern society should be linked with the institutional and cultural context from which they are understand and criticized’.²⁹ Knowledge of information and wisdom of its use step out of static laws almost at the time of their enactment as laws. ‘The knowledge of things, of the objectives that could and should be attained, and the disposition of things required to reach them: it is knowledge that constitute the wisdom of sovereign’.³⁰ In our time when sovereignty is in the people’s hands the idea is not to call back the forms of collectivism, but to upgrade and implement the pluralism of interests and identities in the field of *values*, where a person is valued already because s/he *is* the representative of human nation. Between extreme individualism and collectivism, the middle is in *personalism*:

“its key advantage is that human is acknowledged at the same time as an essential social being and as a being that exceeds his sociality. Human personality and to his environment transcendental individuality, that is also his freedom, the autonomy and personal initiative is putted in dialectical relationship with the attitudes held by the man as a member of the social wholeness to other individuals or to the other as a whole. Individual therefore is not over the whole, but it isn’t also subject to it but is included in it on a such way that precisely with this inclusion exceeds it as a personal, spiritual, free, and initiative being. In this sense we can say that man is a member of society and also at the same time he is standing against it”.³¹

A modern person as “persona”, as a mask, through which its character is shown has nowadays the form of apparent logical contradiction: *tercium non datur* (no third [possibility] is given; non have a strike through because there is third possibility). Today’s principle does not exclude any more the middle part. Person through his “mask” as persona can show more than it is behind (it counts what is done³²). The modern person must act impartially, even if it wants to proceed otherwise, must be valid within ethical and moral principles. Since these are used in relations with others, by that arises a question of their use. Equity is closely linked to equality, but it must be upgraded with *activity* that in a particular proportion is responsible also for deprived social classes or individuals. Provided that modern persons, who want good government and successful private life, are the active and knowledgeable persons – how modern government can look like? This is the content of the next section, although it is even now clear that a modern public servant, who works in this kind of government, should be similar. How can servants then be the same as other persons, *i.e.* active and knowledgeable?

²⁸ Ronald Dworkin, ‘Liberalna Skupnost’ in De-shalit Avineri (ed), *Komunitarizem in individualizem* (Sophia 2004) 211.

²⁹ Igor Lukšič, ‘Spremna Beseda’ in De-shalit Avineri (ed), *Komunitarizem in individualizem* (Sophia 2004) 227.

³⁰ Foucault (n 15) 212.

³¹ Anton Stres, *Svoboda in Pravičnost* (Mohorjeva družba 1996) 49.

³² The individual can become a hero, although it is afraid of, a good speaker, although it has powerful stage fright, is good, although it does not meant to be. A human can go beyond himself.

3. New managerial positions for government interventions

Legal states – at least on a declaratory level – result from the rule of law, from the principle of regulation under the law. Law implements the will of the people for peace, security, freedom, opportunities of self-realization of man and provides procedures and methods for the peaceful settlement of disputes. Wherever exists a community, there are rules found,³³ but they cannot be effective *per se*. And the present time – *vis-à-vis* global environmental problems, mental health and aging problems etc. – is not to be something we could be proud about (this especially holds or states that are low on global rankings). All theories are tools by which we try to achieve important issues that are related to public life, and all can be accepted in some specific context if they are consonant with public value governance in which ‘governments, businesses, non-profit organizations, and civil society play roles in addressing public challenges, creating public value, and honouring values beyond efficiency and effectiveness—especially democratic values’.³⁴ New responses of society should be put on a new, altered relationship between the individual and society, if old ones are not successful. This new, altered and active relationship is given below in a set of statements that could in their combinations upgrade elementary answers about the state-society relations.

Effectiveness of states should rely directly on the positive and dynamic administration.

Values are the balancing and linking factor between too much and too little. The problem is how to ensure the impact of such values, of ethics in governance that has its foundations in the normative values of honesty, credibility, communication and the very sense of community, when we *ipso facto* know that a human (and so also a public servant) cannot be completely impartial? The latter stands for the positive stance: in his decision-making s/he must have such stance towards problems, otherwise the latter would not be solved at all (or not with high-level of efficiency). Insisting on a need for the satisfaction of law regardless of everything else, without exception, encloses people in an impassable labyrinth of instructions, distant from people, where a rule *per se* becomes more important than its goal. A contributing factor is also an absence of (administrative) culture that is often not even mentioned in the indexes of words in works that relate to administrative law.³⁵ In a market-driven mode of providing public services officials are for Giroux³⁶ deskilled servants who lost much of their autonomy to be creative. Insisting on a letter of the law regardless of its costs, received its form in legalism and positivism in the early 20th century under the name of pejorative bureaucratism. An important publication on Canadian public service begins with the question whether ‘public servants be obliged to blow the whistle’,³⁷ while for others ‘whistleblowing is now established as one of the most important processes...by which governments are kept accountable to the societies they are meant to serve’.³⁸ There seems to be an “uneasiness” with the formal study of ethics in the public administration.³⁹ If we want a normative system to be realized in life, as a balanced system of rights and duties, in actual social relations must be present – a counter system of the inner weight, distributed power and power to influence under the guidance of values. In this manner Moore talks about the “Public Value Account”,⁴⁰ which outlines the values that citizens want to see produced by,

³³ Among the first is found in Exodus 19-20. The rules are not applied only by states, but are an integral part of our lives. The social and folklore games, dance, speech, music, behaviour etc. are all based on rules.

³⁴ John M Bryson, Barbara C Crosby and Laura Bloomberg (eds), *Public Value and Public Administration* (Georgetown University Press 2015) 3.

³⁵ see Stephen G Breyer and others, *Administrative Law and Regulatory Policy: Problems, Text, and Cases* (6 edition, Aspen Publishers 2006); René Chapus, *Droit Administratif Général* (Montchrestien 1996); PP Craig, *Administrative Law* (5th edition, Sweet & Maxwell 2003); Andrew Popper and others, *Popper, McKee, Varona, and Harter's Administrative Law: A Contemporary Approach*, 2d (2 edition, West Academic Publishing 2010); William Wade and Christopher Forsyth, *Administrative Law* (9 edition, Oxford University Press 2004).

³⁶ *Education and the Crisis of Public Values: Challenging the Assault on Teachers, Students, and Public Education. Second Edition* (2 edition, Peter Lang Publishing Inc 2015).

³⁷ Kenneth Kernaghan and John Langford, *The Responsible Public Servant*: (Institute of Public Administration of Canada 2014) 14.

³⁸ AJ Brown and others, *International Handbook on Whistleblowing Research* (Edward Elgar Pub 2014) 1.

³⁹ Terry L Cooper, *The Responsible Administrator*: (6 edition, Jossey-Bass 2012).

⁴⁰ *Recognizing Public Value* (Harvard University Press 2013).

and reflected in agency operations. These include the achievement of collectively defined missions, the fairness with which agencies operate, and the satisfaction of clients and other stakeholders.

In a highly interdependent and rapidly intertwining world of relations between individuals, groups and states the concretisation of rules is out-dated almost upon their admission; directions can be easily established with more general concepts and rules that must be run by values, followed by trust and built by assistance. Culture as a set of achievements and values of concrete human society, and as a result of human activity and creativity is characterized by raised expectations that overflow into customs and practice. Since the first democratic states in 18th and 19th century, the independence and impartiality of public administration (because of the former imperial absolutism) was very appreciated, but this position per se (as well as others if they are exaggerated) can lead to oblivion of their true meanings. A value-neutral executive authority can exist only in connection with other values, rules and actions – an evidence of this is a demand to respect the adopted codes of ethics, the fundamental principles of public service, constitutional, legislative and other legal demands among which public trust and/or legitimacy of their actions is the crown of their success. By the large emphasis of legal grounds with their signs in the French principle of legality and general interest,⁴¹ German war experiences and subsequent post-war emphasis on the protection of individual rights,⁴² the general⁴³ understanding of the British rule of law⁴⁴ as the principle that no one is above the law, the importance of values as “untouchable movers” that prevail within the agencies and society, has somehow been lost. They are sometimes found at the beginnings of civil servants acts but – at least in the case of Slovenia – very rarely is found a person who even names them. The positive and dynamic administration that seeks for positive elements also in negative cases and cooperates, communicates, co-produces with other public and private institutions cannot be based on rules, because also the latter are based, formed and implemented on the public service values (e.g. be politically neutral, avoid conflicts of interest, always act in the public interest, protect privacy, do not disclose confidential information and be accountable) and trust of people, that administration will fulfil their expectations. All such results assemble the principle of good administration.

The positive and dynamic administration must rely on equality and distributive justice where it is so justified by the public reason. Justification must be based on solid argument.

History has often shown that both in the terms of market economy with the (neo) liberal state as on the field of human rights with democratic state, we should take into account the Aristotle's principle of justice. The latter is in equity, which is middle - between a perfect competition and a full monopole, between liberal capitalism and state interventionism, between human rights and communities' rights. A state's role should not be overstated (the state is responsible for everything), not underestimated (the market solves everything). Experiences show that the many of our needs are fulfilled outside the market, with offers assured by a central government and its institutions. The answer about distributive justice or the content of public interest in such cases depends on a specific socio-political situation in which is a specific state, on a nation's characteristic features, its values, on an economic level and other factors that are in some state more or less relevant according to other states. From these characteristics depend on whether the state will itself produce certain products (through *ius imperium*), or will help to organize the production of desired goods or services in the economic (market) or social spheres (public services). In addition to macro-and micro-economic condition in which a state's economy is, there are the different opinions of people, and depend on their philosophical, political beliefs and historical circumstances that have shaped each society. These specific circumstances and assumptions affect the competitiveness and democracy of individual states.

⁴¹ See the French *Déclaration des droits de l'Homme et du Citoyen* of 1789.

⁴² Mahendra P Singh, *German Administrative Law in Common Law Perspective* (2nd edition, Springer 2002).

⁴³ In-depth insight into the components of the rule of law actually reveals that the fairness (the procedural and substantive) is one of its main elements Wade and Forsyth (n 35) 22.

⁴⁴ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (Ulan Press 2012).

At this point the combination of the above mentioned general conditions that will be more or less present in every regulation and which were already indicated in Dworkin's ethical question⁴⁵ and Stres's personalism,⁴⁶ can be indicated as the starting points for the proposed statement of positive and dynamic administration. New content of social justice should always be achieved when new circumstances emerge; it could be named as justice as fairness or justice and equality, or as the personal activity that cares also for others. This forms equality and distributive justice from the second part of the statement. Although a moral individual applies his moral rights and duties by this way, nothing has been yet said about ways through which a multitude of individuals should proceed, where an individual is no longer just a person, but the free and equal citizen to everyone else, as a political entity with political rights and responsibilities. This situation has been discussed by Rawls in *Political Liberalism*. For him the citizen still remains the moral agent (also the political conception is moral, since it derives its content from certain ideas, principles and standards),⁴⁷ but his rights also depend on other people. To carry out his equal political rights and powers by which individuals could rationally justify their decisions, he imposes the criterion of reciprocity: 'our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions'.⁴⁸ What the veil of ignorance is for the moral individual (who finds answers for his conduct), the criterion of reciprocity is for the political citizen (who seeks answers for political community with other citizens). In the current position of society a political citizen is still consummated predominantly in a role of public servant who, on average – with performing his official powers and duties – has a greater effect on the state's operations than other citizens.

Political legitimacy of decisions is largely produced in a context of decisions by public officials, who should be different as their role as citizens who accept and reject proposals according to better arguments and not *vice versa*. Political legitimacy cannot be achieved by putting citizens in the role of public servants – the latter should be put in the role of the first. If they (now as citizens) approve reasoning of (them as public servants) the legitimacy of their decision is confirmed. The Rawlsian criterion of reciprocity that refers on the public reason holds with this correction, and is partly aligned with the Rawls's introduction of "civic friendship": '[t]he idea of political legitimacy based on the criterion of reciprocity says: our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions-*were we to state them as government officials* (emphasis added) – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons'.⁴⁹ Linkage to Rawls is given primarily through its real effect on society - a major proportion is not on the general public, but on state institutions. The majority of laws and regulations are influenced by the executive branch of government (although the last word has the judicial branch). For a public official, who cares for the good performance of his duties, the main importance is "personal amnesia of his own situation": oblivion of self-interest and the presentation of arguments for which s/he believes to be accepted because of its content by all actors in society. This can be defined as the principle of independence and impartiality. This consideration is reflected in the statement of reasons and objectives (the obligation to state reasons) not only in the final decision, but also for rejecting the proposals made by individual citizens and civil society in formulating their legislative requirements. Contents are becoming increasingly more important than its author.

The public reason justifies not only the application of formal rules, but also their preparation, and participation in new informal causes and reasons.

The indeterminate legal notion of "public reason" and/or "public interest" as its synonym may serve also to address new factors beyond the market's (un) efficiency or classical interventionism,

⁴⁵ (n 27).

⁴⁶ (n 31).

⁴⁷ *Political Liberalism* (2nd edition, Columbia University Press 2005).

⁴⁸ *ibid* xlii.

⁴⁹ *ibid* 446–447.

which were the basis of government intervention in the name of the public interest: global warming, health and diseases of populations, deeper inequality between states, the scarcity of natural resources, migrations, unemployment, the aging of population, the risks of global proportions, a waste of resources, pollution, and other aspects that are not limited to the field of economy. The process of globalization that has gained momentum through the removal of the iron curtain and with the modern communication technology begun in the 15th century with the formation of colonies, but actually today with the globalization of economy and technology, creates serious global problems. They directly affect the ability of states to provide public goods and services. This ability within the above mentioned more and more global problems can still, and will be, probably addressed within the notion of public reason, while the latter's content will be filled by the positive and dynamic administration, and with equitable, solid arguments. As the principle of legality has been the major cornerstone for the rule of law, people usually think about it in legal terms, but this principle also includes a component of *activity*, which is located in the *perception* of new situations, anticipation of future, probable trends and elimination of potential problems. Legal rules are only monoliths, if their implementers do not breathe life in them. As life is the most important element of human prosperity we believe that life-like elements must be present not only in rules but in every thing. There can be many forms found also in the states' actions. States participate in various formal links within the international treaties and agreements (UNCLOS,⁵⁰ FAO,⁵¹ ICSID,⁵² IMO,⁵³ ISA,⁵⁴ WMO,⁵⁵ IMF,⁵⁶ WB⁵⁷ etc.) and informal clubs; as these forms simulate life-like connections and cooperation they have more and more binding decisions, although they as such are not formally adopted (G7 – FATF,⁵⁸ G8, G20, the Basel Committee on Banking Supervision etc.). The open method of coordination in the EU⁵⁹ as a form of soft law is another example of filling a content of public reason through cooperation with others outside of formal arrangements. The public reason essentially depends on fillers of its content; they depend on persons who fill its meaning. No matter how we turn on every occasion we “stumble” on a human element.

4. Management by the managed – a wish or a myth?

The above mentioned statements about enforcing and the administration of decisions are closely connected with a developed and strong civil society, with a “decentred state”⁶⁰ that has apparently moved from the “old” welfare state through the regulatory state to the new “enabling state”,⁶¹ where the command and control applies across all social and economic life, and with already mentioned Moore's “Public Value Account”⁶². ‘The “new” in new regulatory state denotes new techniques of regulation that apply outside of service delivery in the context of the welfare state’.⁶³ The so-called new modes of governance (in relation to the old one of command and control) have been in the EU particularly exposed with the emergence and development of the Open Method of

⁵⁰ United Nations Convention on Law of the Sea.

⁵¹ Food and Agriculture Organization.

⁵² Centre for the Settlement of Investment Disputes.

⁵³ International Maritime Organization.

⁵⁴ International Seabed Authority.

⁵⁵ World Meteorological Organization.

⁵⁶ International Monetary Fund.

⁵⁷ World Bank.

⁵⁸ Financial Action Task Force.

⁵⁹ European Commission, *European Governance - White Paper COM(2001)428 Final* (2001).

⁶⁰ In decentred perspective we face the ‘collapse of the public/private distinction in socio-political terms and more, challenging to our understanding of what regulation is, a rethinking of the role of formal authority in governance and regulation. In decentred analyses, regulation “happens” in the absence of formal legal sanction – it is the product of interactions, not of the exercise of the formal, constitutional recognized authority of government’ Julia Black, ‘Decentring Regulation: Understanding the Role of Regulation and Self Regulation in a “Post-Regulatory” World’ (2001) 54 *Current Legal Problems* 103, 6..

⁶¹ Neil Gilbert, *The ‘Enabling State?’ From Public to Private Responsibility for Social Protection: Pathways and Pitfalls* (OECD 2005).

⁶² (n 40).

⁶³ Black (n 60) 11.

Coordination.⁶⁴ It emphasizes the notion of European social dialogue, although evidences show that the participation of civil society is *marginal*:

“[a]lthough there are some signs of civil society involvement in the OMC – strongly dependent on policy area and national circumstances (De la Porte and Pochet 2005; Armstrong 2005; Kerschen 2005) – the dominant picture remains one of a narrow, opaque and technocratic process involving high domestic civil servants and EU officials in a closed policy network, rather than a broad transparent process of public deliberation and decision making, open to participation of all those with a stake in the outcome (Zeitlin 2005, 460; Smismans 2004a; Jacobsson and Vifell 2002; E. Leonard 2001). One should be very reluctant in arguing that new modes of governance are characterized by their particular democratic participatory nature. More horizontal and heterarchic governance does not mean automatically more participatory governance in normative democratic terms.”⁶⁵

The above mentioned conclusion is evident also from the statement from *A White Paper on European Governance* which refuses legal rules that would ‘create excessive rigidity and risk slowing’,⁶⁶ from the statement that ‘the guiding principle for the Commission is to give interested parties a voice, but not a vote’⁶⁷ or from a concrete consultation procedure, where individuals or a civil society are very marginal element.⁶⁸ A few available documents show that in the U.S. the large regulated parties enjoy much greater presence in agency decision making processes than do public interest groups and other outside parties (they are also most active in FOIA cases⁶⁹). The US Senate Committee generalized the results of its findings as follows:

“[o]n the whole, the data clearly show that participation by public or nonregulated interests before Federal regulatory agencies is consistently exceeded by the participation of regulated industries, and too often constitutes only a tiny fraction of such industry participation. This pattern holds for both rulemaking and adjudication, although the margin is not as great for rulemaking as it is for adjudication”.⁷⁰

What would the above mentioned Senate said in 2014 when the voting-age population (VAP) was 33,2 % *vis-a-vis* 52,6 % in 1980?⁷¹ Switzerland is a »land of direct democracy«, ‘but its voter turnout is the lowest in Western Europe and one of the lowest in the world. The average turnout at

⁶⁴ European Commission, *European Governance - White Paper COM(2001)428 Final* (n 59). The open method rests on soft law mechanisms such as guidelines and indicators, benchmarking and sharing of best practice. This means that there are no official sanctions for laggards. Rather, the method's effectiveness relies on a form of peer pressure and naming and shaming, as no member state wants to be seen as the worst in a given policy area *ibid*.

⁶⁵ Stijn Smismans, ‘New Modes of Governance and the Participatory Myth’ (2008) 31 *West European Politics* 874, 18.

⁶⁶ European Commission, *European Governance - White Paper COM(2001)428 Final* (n 59). Creating a culture of consultation cannot be achieved by legal rules, which would create excessive rigidity and risk slowing the adoption of particular policies. It should rather be underpinned by a code of conduct that sets minimum standards, focusing on what to consult on, when, whom and how to consult. Those standards will reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access on the basis of sectorial interests or nationality, which is a clear weakness with the current method of ad hoc consultations. These standards should improve the representatives of civil society organisations and structure their debate with the Institutions *ibid* 17.

⁶⁷ European Commission, ‘Communication from the Commission: Towards a Reinforced Culture of Consultation and Dialogue - General Principles and Minimum Standards for Consultation of Interested Parties by the Commission. Brussels, COM(2002)704 Final.’ (*International Cooperation and Development*, 2002) 5 <https://ec.europa.eu/europeaid/communication-commission-towards-reinforced-culture-consultation-and-dialogue-general-principles-and_en> accessed 3 May 2016.

⁶⁸ On 2nd June 2010, the European Commission launched a wide-ranging public consultation about Green Paper on corporate governance in financial institutions and remuneration policies ‘Green Paper: Corporate Governance in Financial Institutions and Remuneration Policies. Brussels, 2.6.2010 COM(2010) 284 Final’. The following contributions have been received: 178 from organisations (where financial services industry, investor community, non-financial and cross-sector organisations, audit and accounting firms formed 82%, civil society 10%), 8 from citizens, and 28 from public authorities.

⁶⁹ FOIA is most frequently used to obtain information that an agency has required third parties to fill with if. In most such instances, the requesting party is a business firm seeking to discover a rival's trade secrets or other competitively sensitive information. Of the 48,000 FOIA requests made to FDA in 1993, 82 percent came from industry Breyer and others (n 35) 687.

⁷⁰ United States Senate, ‘Study on Federal Regulation. Vol. III: Public Participation in Regulatory Agency Proceedings’, Committee on Government Operations, United States Senate. 95th Congress, 1st Session, Senate, U.S. Govt. Print. Off., Washington’ 12.

⁷¹ US Election Project, ‘Voter Turnout Data - United States Elections Project’ (2016) <<http://www.electproject.org/home/voter-turnout/voter-turnout-data>> accessed 4 May 2016.

parliamentary elections in Switzerland has been almost 57 per cent since 1947'.⁷² But – due to different international rankings – this cannot mean that the Swiss are dissatisfied with their model of democracy. Although there seems to be – at least for now – a gap between the popular public participation and its real effects, the latter are de facto achieved by someone else, *i.e.* public servants (who already by their number are ahead of other officials). Similar objections are given within 'participation in agency decision-making processes [that] is greater among those who can afford significant expenditures, and furthermore that more parties can afford to participate in informal rulemaking than in adjudication...More opportunities for influence ultimately translate into more influence'.⁷³ And this "capital element" should not be disregarded. The greatest potential to influence continues to be in industry, due to its capital that is higher than in the Treasury. As the beginnings of parliamentary government have revolved around money, so there is no surprise that today's neo-liberal ideas are about the privatization, deregulation and liberalization. Despite the global economic crisis it seems that it is still much debate about the competition, liberalization, elimination of administrative burdens, deregulation and re-regulation. This 'narrative continues to advocate deregulation and unfettered markets...[because] regulation, deregulation and reregulation are all prone to strategic capture: they are essentially strategic tools that are employed for the benefit of the few at the expense of the silent, disenfranchised public'.⁷⁴ Until now, the classical notion of state stays around the divide state *versus* market, interventionism versus liberalism, rather than state *and* market, interventionism *and* liberalism. Vogel talks about socio-economic perspective, based on the idea that 'regulation in an advanced economy is not an appendage to the market but a constitutive element of the market'.⁷⁵

How could then we make a new form of coexistence between market *and* state, where would be not only prevailing economic interests, where the management of public affairs would come more to the fore? *Better involvement of all stakeholders* would certainly help. 'Governance structures should give a voice to each stakeholder (credit holder, depositor, wage-earner, citizen, communities etc.) in order to mitigate the absolutism of the profit motive'.⁷⁶ How we could achieve a peace of theoretical enabling state,⁷⁷ responsive state,⁷⁸ decentring state⁷⁹ regulatory capitalism⁸⁰ and other theories that include etatist, civil, national, international, global, private, public, voluntary and coercive regulation with practical administering of public affairs? Government (the state) or governance (independent public agencies and other bodies that have regulatory capacity) is not the most important thing to individuals although they are many times affected by rules (a rule is the rule, no matter from who it is): they must respect them no matter if rules affect them directly, the environment, human health or a whole nation. Despite the still preferred ideas of liberalization, deregulation, privatization, and other ideas that want to eliminate the state's monopolies and coercion, we must not forget that new ideas are still largely and only *ideas*. It is not to be overlooked that neo-liberal ideas indirectly enable regulation in the new form of re-regulation, as was noted by Vogel in *Freer Markets, More Rules*⁸¹, as well as the fact that *a new regulation has behind also a new state coercion*, which

⁷² International Institute for Democracy and Electoral Assistance, *Voter Turnout in Western Europe since 1945: A Regional Report* (International Institute for Democracy and Electoral Assistance 2004) 73
<http://www.idea.int/publications/voter_turnout_weurope/index.cfm> accessed 4 May 2016.

⁷³ S Croley, 'Theories of Regulation: Incorporating the Administrative Process' (1998) 98 Columbia Law Review 1, 129.

⁷⁴ Christine Parker, 'Three Narratives of the Global Financial Crisis' *Socio-Economic Review* (2010) 547 549.

⁷⁵ Steven Kent Vogel, *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries* (Cornell University Press 1998) 548.

⁷⁶ Robert Boyer, 'How New Will the next Regulatory Regime Be?' *Socio-Economic Review* (2010) 541 547.

⁷⁷ Gilbert (n 61).

⁷⁸ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press 1995).

⁷⁹ Black (n 60). Decentring thus refers to changing (or differently recognized) capacities of the state and limitations on those capacities. Essentially, decentred regulation involves a shift (and recognition of such a shift) in the locus of the activity of regulating from the state to other, multiple, locations, and the adoption on the part of the state of particular strategies of regulation *ibid* 112.

⁸⁰ Parker (n 74). Regulatory capitalism denotes a world where regulation is increasingly an hybrid of different systems of controls: etatist regulation co-evolves with civil regulation; national regulation expands with international and global regulation; private regulation co-evolves with public regulation; voluntary regulations expand with coercive ones; and the market itself is being used or mobilized as a regulatory mechanism *ibid* 551.

⁸¹ (n 75).

excellently showed Crawford,⁸² and that despite the prevailing ideas about agentification⁸³ or rolling back to state,⁸⁴ an actual state of affairs can be different. It is more and more clear that neoliberal ideas increase regulation (re-regulation). By the more numerous public norms state coercion is more present. And all these rules were once only ideas, made by some person. How can the individual or a civil society find themselves in this grip of man-made rules? There are still available the classical mechanisms of the litigation from the 19th century, where a result because of »financial malnutrition«, will show mostly small chances for success. State institutions still largely operate within the framework of classic constitutional mechanisms of checks and balances and responsible government. They now include the civil society in the concept of the individual as citizen, not as a consumer,⁸⁵ mostly in the field of environmental (under the Aarhus convention) and media regulation (a corporative structure of administration bodies and radio or television broadcasting), but otherwise they still largely operate within institutions that are slow outwards opening. In the public life (still) dominate economic issues, and with them economic organizations, that have an impact on state institutions and civil society.

This pessimistic summation should not prevent us to be positively oriented, to follow an outstanding modelling-behaviour of conscientious and courageous individuals, who made changes in their surroundings. The world is a complex thing, and there are no easy, one-size-fits-all answers. All being said, the idea of an active public citizen and/or an active public servant is not yet mature enough (they would otherwise be around us). The idea of representative bureaucracy was articulated by Donald Kingsley;⁸⁶ he coined this term in response to his observations of the British civil service during the WWII. To him the British civil service was effective in implementing the policies of a political party in power because a middle-class economic orientation has been their common denominator. The present situation could be corrected by emphasizing the community values in the public administration, at the education and training of politicians and officials. Values could and should be our denominator as the fundamental legal principles (as their derivations) are in the law. Officials have the best chance to influence the state as a whole, so their impact should be upgraded not only by expertise, but primarily with an awareness of their unique work and positive outcomes they cause for a whole community. Experts in committees should become the real informal people's delegates. Their expert knowledge should be used with the idea of representation of the whole people. Comitology should become "delegatology" in a positive⁸⁷ sense. Every public servant should be self-viewed as the representative of the people, as a part of the whole society, who knows that every action causes reaction(s).

⁸² Adam Crawford, 'Networked Governance and the Post-Regulatory State? Steering, Rowing and Anchoring the Provision of Policing and Security' (2006) 10 *Theoretical Criminology* 449. Without wishing to discount the importance of regulation beyond government, I have sought to highlight the danger of running away with the sense that the state as a conceptual entity and empirical reality is becoming redundant. Recourse to command and control continues to occupy a prominent place within the contemporary social regulation armoury. In many tangible ways, the state retains an anchoring role in the provision of security even with regard to much private governance. In Britain, state ambitions with regard to social ordering have not been reduced, but rather extended. However, government's capacity to deliver, always limited, has become more evidently so. In this mix, the law and command continue to be significant—if blunt—regulatory weapons. In certain areas state intervention is being withdrawn, in other areas it is redrawn, and in still others it is being extended. It is the latter than I have deliberately focused on. What we see resulting is not the state becoming 'weaker' or necessarily 'smarter', but rather diverse forms of a more frenetic, volatile, contradictory and politicized regulation of behaviour *ibid* 471.

⁸³ Alistair Cole and Jean-Michel Eymeri-Douzans, 'Introduction: Administrative Reforms and Mergers in Europe - Research Questions and Empirical Challenges' (2010) 76 *International Review of Administrative Sciences* 395. Despite the ideas of agentification we are witness also to the integration and pooling of administrative bodies and integration of forms in achieving common goals. 'There are common trends as regards administrative reforms, but these trends are subject to highly differentiated forms of surprising "acclimatizations", non-anticipated hybridizations and paradoxical real outcomes' *ibid* 404.

⁸⁴ T Christenseb and P Laegred, 'Regulatory Reforms and Agentification.' [2005] Unifob AS, Working Paper 6. Stein Rokkan Centre for Social Studies. Paradoxically [despite criticism of regulatory agencies, regulatory failure and crisis] during the late 1980s and 1990s there were more new regulatory authorities created around the world than ever before *ibid* 11.

⁸⁵ Mike Feintuck, 'Regulatory Rationales beyond the Economic: In Search of the Public Interest.' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Reprint edition, Oxford University Press 2012).

⁸⁶ *Representative Bureaucracy, an Interpretation of the British Civil Service* (The Antioch Press 1944) </catalog.hathitrust.org/Record/001145324> accessed 3 May 2016.

⁸⁷ The term "delegatology" apparently has arisen 'in a desperate search for ideas and justifications as to why Hillary should remain in the race, the Clinton camp is specializing in "DELEGATOLOGY", the "art of categorising delegates for the sole purpose of finding a category where you can lead"' Omar Arouna, 'Delegatology, the Clinton's Art of Denial' (*BlogObama*, 2008) <https://oarouna.wordpress.com/> accessed 3 May 2016.

5. Conclusion

Although the legal state is the product of 18th and 19th century, individuals had (on truth – just the free men citizens) at the time of ancient Sparta and Athens greater opportunities to influence the functioning of government. This can be (*cum grano salis*) assumed from books; from them we can in every moment accept ideas for which we assume would be good for us. Today's societies are faced with the decline of representative democracy (the voter participation declines). Further reinforcement of the classical idea for the need of elected representatives and professional staff raises questions about the legitimacy of their decisions. Although the elected representatives theoretically represent the people as a whole, it is practically very hardly realizable (if not *de facto* wrong) idea. Reasons for a decline of active status of people in political and everyday life (due to obesity or reduced physical activity) can be traced in the welfare state and all ideas that put a citizen on a consumer's pedestal. The citizen has changed into a beneficiary, a client, and became "greedy" of (more) public benefits, while benefits always come at the expense of solidarity of all. Social and natural conditions indicate that states alone cannot resolve problems, and that classical representative democracy cannot be the only answer. Legitimacy of an elected politician in a party list is on shaky grounds, if s/he listens only the party's guidelines, if s/he trades votes and does not give convincing arguments. Although public participation is allowed, it is still many times prevented (or even not regulated) in legislation with the doctrine of standing (people cannot show the legal interest, although a subject is about community matters). The ancient direct involvement of people represented the concept of public participation in governance in a way that even today cannot be achieved, although we have modern information technology.

It seems that difference is (still) in our *heads*. Knowledge, wisdom, information and power are the results of winning pretensions for truth. Individuals are the ones who could through the articulation of opinions come to acceptable solutions and to which they should also actively help in their realization. We have in us always more ideas than we think. People are destined to live among people; we are more common in cooperation than in conflict. This is not a call for people to wake up and establish another political party, but to frame a system in which knowledge can be elevated directly from and for the people. The state must, on the other hand provide opportunities for a greater use of personal potentials, which are reflected in self-actualization and greater satisfaction, and thereby also in increased freedom. New guidelines for the state's operation must be complemented with backgrounds for specific government intervention. Public administration is composed from people (we all are subject of cognitive limitations, so politicians and officials have no better basis regardless of employer) and will be so flexible and dynamic, as will people be such in it. "Energy" charges people only through values: already Alexander Hamilton wrote that energy in the executive is "the leading character in the definition of good government",⁸⁸ and could be simply called "effort" in the public administration.⁸⁹ The same stands for our assumptions. Public officials, who prepare draft regulations, still many times also implement the latter. The rule of the people remains the only alternative to active public servants. This will be again with high probability achieved by officials as regulations' drafters. Representative bureaucracy although of its age is still far away from its ideal state. Its beginning in the public life could be *care*. We should change our perspectives to gain further insides in all things, and not forget that ancient Athens along the democratic assembly (*ekklesia*) had lawgivers who served as jurors (*nomothetai*), and the highest executive Archons, who presided over executive Greek council (*Boulē*) as well as over Ecclesia. Public administration is more important than many people think. In it work public servants, so first *gnothi seauton* (know thyself) to know them and others in us, and then *act*. The state *is* the people, so an image of the state can be reflected only in concrete actions of us all.

⁸⁸ *The Federalist Papers* (Reprint edition, Penguin Classics 1987).

⁸⁹ Croley (n 73).

Mirko Pečarič

(Associate Professor for Administrative Law and Public Administration, University of Ljubljana, Slovenia)

mirko.pecaric@fu.uni-lj.si