

# Representative Public Administration as the Modelling Behaviour for the New Bureaucracy

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## ABSTRACT

There is a widespread belief that the states and markets are not the omnipotent institutions. Although public participation is gaining importance, this paper argues that in the present situation liberal and democratic elements can be fastest achieved by promotion of values in the public administration. The idea is built on a notion of active representative bureaucracy, while passive representation of the society should be still under the rule of law and/or merit system of hiring public servants. The proposed strategy in a time of austerity is somehow illogical, but it could be efficient: more public funds should be given in education, (re)training and practical experiments of the good practices from other states should become more relevant. Although in our time – when reductions of public funds and dismissals of employees are present – it will be difficult to achieve this goal, we should not forget that humanity has never depended on finances; the public trust, awareness, faith and other values are all the more needed in the time of crisis. We should start from ourselves as individuals to proceed towards the benefits of community.

*Key words: positive individual, public participation, public values and active representative bureaucracy*

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The world is a dangerous place to live not because of the people who are evil but because of the people who do not do anything about it.

Albert Einstein

## 1 Introduction

Recent national and global economic shocks have caused wide public expectations that the national states will circumvent or remove them with the existing or additional measures. The public expectations, interests, beliefs, convictions and public (e.g. civil rights, liberal, revolutionary and other) mass movements are therefore the constant leitmotif

for reinventing<sup>1</sup> government. In more and more complex and globally oriented environment, integration and cooperation are gaining importance; this is shown in the notions of governance<sup>2</sup>, global administrative law<sup>3</sup> and global governance<sup>4</sup>, while the old bureaucratic model is still present and even enhanced by the informal meetings, procedures and decisions that are taking place within the international treaties, agreements or informal clubs (e.g. in UNCLOS, FAO, ICSID, IMO, ISA, WMO, IMF, WB, G7 – FATF, G8, G20, the Basel Committee on Banking Supervision). Public administration as the bureaucratic organization from Weber on, is – already without the above mentioned processes – still struggling with the alleged difficulties of controlling its operations (Weber, 1978, p. 987); in today's neoliberal time there are even more rules, coercion and new regulatory authorities, while a bureaucratic apparatus is still firmly present (Vogel, 1995; Crawford, 2006; Christensen & Laegreid, 2005; Cole & Douzans, 2010) and has even more arbitrary powers (Aronson, 2009). Despite today's more »pattern-less mixture«<sup>5</sup> between the classical and neoliberal ideas in different administrative models of state, the latter will still achieve public goals by the public administration through more or less (in)direct implementation. It looks that these processes will be even further away from power vested in the people than today. From the above-mentioned processes we could conclude that bureaucracy is rough opponent to increasing complexity.

Although the people are on bureaucracy's other side included within the notions of governance, network governance, network-centric governance etc., they are in practice still far away from any kind of real administration of state. Harder questions and means request higher legitimacy. A representative government cannot at today's technological development,

- 1 Reinvention is a more appropriate word than the word new, because it is nothing really much new in the NPM. The new is just the re-invention of the older ideas of the New Public Administration from the late 1960s, if we limit ourselves to the recent history. »New Public Administration was greatly influenced by the Laswell argument that politics, including public administration, determines who gets what, when and how« (Fredericson, 1996, p. 268).
- 2 In this paper the term governance will be used as »a participatory process of governing the social, economic, and political affairs of a country, state, or local community through structures and values that mirror the society. It includes the state as an enabling institution, the constitutional framework, the civil society, the private sector, and the international/global institutional structure within limits. Here, governance is used as a broader concept than the traditional, unilateral, and authoritative forms of government whose governing elites sit on in unilateral commanding positions« (Farazmand, 2004, p. 11).
- 3 See B. Kingsbury, N. Krisch and R.B. Stewart, 'The Emergence of Global Administrative Law'. doi:10.2139/ssrn.692628.
- 4 »All possibilities to improve global governance within its present paradigms and make it more resolute should thus be exhausted, including reforming the United Nations, strengthening cooperation between major powers, expanding global networks, facilitating global governance elites, developing global civil society and more. ... However distasteful, this recommendation is much preferable to the emergence of a Global Leviathan, if an approaching Behemoth or other catastrophes leaves no other choice for assuring the survival of humanity« (Dror, 2002, p. 192).
- 5 »Although we can see a pattern of sorts in reforms since 2000 — certain themes and tools that are internationally echoed and reproduced — these do not amount to a single new model or menu. Rather...we have a menu of dishes (tools), and different customers are selecting different combinations, and flavouring the same dish with different paradigmatic sauces« (Pollitt & Bouckaert, 2011, p. 213).

interconnectedness between the states, companies, markets etc. mean only that peoples' representatives can make decisions on their behalf, but also that citizens must have a closer contact with making and controlling<sup>6</sup> public decisions. From the effects of the above mentioned »reinvention movements« and current practice it seems that the bureaucratic apparatus in not so distant future will still prevail; the people with their common problems of every day's life simply cannot approach and execute the more and more complex state's tasks on a professional basis. Can we look on public officials as citizens? Practice reveals that the latter show the same characteristics as bureaucrats, if they were/are put in the bureaucratic model of governance.<sup>7</sup>

We are therefore faced with the two contradictions: despite the fact that we would like to have more direct democracy, the latter with the necessary integration and cooperation between states fades (democratic deficit), and at the same time we would like to have professionally executed democratic decisions by a small bureaucratic apparatus (administrative deficit). Can a solution be found in crossing these parts, i.e. in democratic administration? Rather than to reform the whole state's organisation we could in the states with parliamentary democracy – where nowadays the executive branch<sup>8</sup> prevails – »install« more democracy in the public administration. This idea is close to »representative bureaucracy« that rejects the politics-administration dichotomy<sup>9</sup> and suggests that organizations perform better, if their workforces reflect the characteristics of their constituent populations.<sup>10</sup> This idea has been studied by many other authors (Long, 1952; Meier, 1975; Mosher, 1982; Selden, 1997, Meier et al., 2001; Keiser et al. 2002), but so far has been less successful in creating any comprehensive, scientific framework.<sup>11</sup>

6 »In the theory of the modern state, power derives ultimately from the people. The control of it is therefore, in the end, for the benefit of the people. There is no part of the law's discipline that is a more worthy subject for devotion in life than this« (Kirby, 2008, p. 14).

7 They all could »perform« a very important person of Gogol's *Overcoat*, the law court officers of Kafka's *Trial*, the overzealous official of the Environmental Protection Agency in *Ghostbusters*, the rule-bound automatons of Philip Howard's *Death of Common Sense* or the masters of obfuscation and manipulation in the BBC's comedy *Yes Minister*. This can be seen already in Plato's *Meno*, where a slave of Meno can recollect knowledge without any one teaching him, if he is only asked (guided by) the right questions (Plato, 2009, p 67). While Plato has argued that slave already has had knowledge in his soul, knowledge can be also in applying the laws of logic if someone is directed towards the right answers.

8 E.g. in Slovenia, within the period 1992–2011 the Government of Slovenia submitted 2783 draft laws of which 2575 were later adopted as the laws (92.52%), MPs submitted 807 draft laws, 229 of which were later adopted as the laws; voters (minimum 5000 citizens is needed for a legal initiative) submitted only the six draft laws of which only one was later adopted as the law (Državni zbor 1992–2007; Poročilo o delu Državnega zbora 2008–2011). There is no doubt that in other parliamentary democracies the prevalence of the executive is also present.

9 As Kenneth Meier puts it, »[t]he theory of representative bureaucracy begins by recognizing the realities of politics. In a complex polity such as the United States, not all aspects of policy decisions are resolved in the 'political' branches of government« (1975, p. 527).

10 The first comprehensive proposal for representative bureaucracy was presented by Kingsley (1944) in his analysis of the English Civil Service. He advanced the argument that the civil service should reflect the characteristics of the ruling class, i.e. the dominant political group.

11 »In the scientific sense, then, theories of representative bureaucracy are still immature. They tend to be considerably less parsimonious and elegant than the positivist ideal (a not-unusual characteristic of inductivism), and their focus on contextual detail has presented difficulties for replicability and predictive capacity« (Fredericson et al., 2012, p. 251).

What if it is so because there is not mainly science, but also ethics, morality, and humanity?

This paper claims that the public administration is not a value-free or neutral activity; although it is very close to politics, it can operate within the context of democratic values, it can – and it must – be sensitive to the public needs and goals. The paper argues that the latter are effective and efficient as much and mostly as the public officials are psychologically self-attuned to achieve desirable outputs in contingent environment with the help of public institutions in which they work. We will therefore proceed in this paper with an individual, driven by values and will put some means to establish and/or to recognise such persons. We will try to demonstrate that states made people selfish by public benefits that were not proportionate to real people's efforts. Luckily in humans there is also solidarity and collectivism; the next chapter will therefore enlighten the active, value driven persons, a notion of personalism, and give some means – by which the active, value driven persons could be »awoken«: national surveys and the usage of modern technology could be the most promising of them. The paper's third chapter states on barriers for the public management by the people and it is therefore rather pessimistic about this goal. This part puts many theories mainly about public participation, and a *contrario* argues that states still at large operate within the framework of the practical or classic administration of public affairs. The fourth part combines democracy with the public administration into the concept of representative public administration and points toward possible future effects of active, i.e. representative public administration. Although there are and/or will be many mistakes the legal rules should have their content given by values, not *vice versa*. Rawls's veil of ignorance and the Golden Rule or ethics of reciprocity are pretty much all that public administrations need at start for a diligent implementation.

## 2 Into Community-Oriented Individual

Except of the inspired individuals and groups that have strived for the greater good of society as a whole (saints, heroes, big leaders), in the so-called liberal state of 18<sup>th</sup> century there were demands only for the fundamental tasks of a state and were as obligations established by people as voters (by their representatives according to the will of the former in desire of the latter to be re-elected), which received its peak or a new platform in the post-New Deal administrative state (Lawson, 1994). Practice shows that government intervention ultimately leads to further intervention. The first intervention does not accomplish the stated goals and politicians then respond with new interventions to correct the problems from the first one. The welfare state thus made people more self-interested, because they do not contribute their adequate share to welfare (in the style: »a person has the human rights–therefore he should has benefits from them«), to which added the NPM with its focus towards the individual as a consumer who merely expects (»value for

money») and nothing (or not enough) gives in return. In a state of crisis higher contribution is needed, because democracy and the self-expression are present in their pure form only when the basic physiological and safety needs are fulfilled (remember the Maslow's hierarchy of needs). Within the concept of the legal and then of welfare state individuals could demand previously merciful benefits as their rights.<sup>12</sup> If this could hold in decades of economic growth, it became different from 1980s onwards; because of a lower state's control and its impact on society (due to the impact of privatization and liberalization) the latter became faced with more fragmentation, interdependencies, complexities and even bigger notion that state cannot do it as »one for all«<sup>13</sup> as it can in the utilitarian welfare economics. This practical impossibility showed that political election complemented by the notion of government by law is not enough:

»Deliberative democratic theory emerged in the 1990s partly as a response to the 'aggregative' view of democracy advanced by rational choice theorists... [individuals] are also able to consider not only the personal value of specific actions or outcomes, but also the common value of general principles of interaction (constitutional essentials). Individuals therefore have the capacity to make judgments that are guided by a sense of justice as fairness« (Rosenberg, 2007, p. 4, 6).

A person as a social being can live only in society<sup>14</sup> that is more than the sum of individuals and the latter ones are always more than just its part. There must be the value of care for (any) fellow man that is present in the idea of human that is *humane*, regardless of the basic needs of a giving individual. Like an individual can produce this »surplus«, which is reflected in leniency and assistance to others, community form this surplus in the notion of public interest. An individual who incorporates public values, a communitarian individual is the other pole and a cure against the self-interested individual, who emerged in the welfare state, who was also the main reason for the emergence of public choice and principal-agent theory. These theories were later incorporated into the new public management doctrine that stood against the previous bureaucratic ideas of good administration (Hood, 1991). Care about human beings therefore means to take good care for our relatives as for our fellow citizens. It can be the cause for legal, social and administrative state. In all of them there are goals of government that cannot be successful if they are no people's help: law and order, public infrastructure, education and health care and social security. This humane surplus without

12 Social rights are stated e.g. in International Covenant on Economic, Social and Cultural Rights (1966) with the duty of State Parties to continuously improve the living conditions.

13 The famous dictum of »one for all, all for one« (the motto of *Three Musketeers* by Alexandre Dumas) gradually became just welfare's motto of »one (state) for all (people)«.

14 »Man is not self-sufficient – he cannot develop his typical human potentials outside the society. In this sense, the theory of the primacy of rights depends on atomistic thesis, which defends self-sufficiency. Any evidence that these skills can be developed only in society or in the certain types of society, is also a proof that we are obliged to maintain the society« (Taylor, 2004, p. 34).

the personal interest could be found in the Rawls »original position«<sup>15</sup> refined with his difference principle<sup>16</sup>, in Dworkin's solution of the ethical question about the good life,<sup>17</sup> which would depend on fairness of community's political decisions or in Arendt's »enlarged mentality«.<sup>18</sup> If Rawls sees justice in community in overlapping consensus between citizens who hold different views (2005, p. 490), Dworkin stresses also the active component not only of state (as Rawls) but also of each individual, who contributes to justice in community:

»To act justly on general is not the thing of passivity;<sup>19</sup> it means not only that we don't cheat but also to do everything we can to reduce the injustices... A just society is a prerequisite of life that respects both ideals [of 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« (Dworkin, 2004, pp. 211–212).

People are not only legitimised – with the principle of the sovereignty of the people – but they also have the formal right to participate in public life;<sup>20</sup> this is shown in the forms of direct democracy and of mini-publics (assemblies by random selection in the citizens' juries, planning cells, consensus conferences, deliberative polls).<sup>21</sup> 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« (Felkins, 1995); if this were true, people would not vote at elections, would not help strangers, fight for homeland security, pay taxes and the like. But they *do*. Ideas of justice, solidarity and collective provisions for the individual needs are subject e.g. in Mary Douglas's *How Institutions Think*: »the rational choice theory ... is faced with insurmountable difficulties when it is faced with the idea of solidarity« (2001, p. 19). An individual is not only a selfish, ego-centred person, but he is also an altruist, volunteer, he is not directed only to himself, but also to others,

15 It should be settled in a situation in which we could choose a society in which we will be born without knowing at the moment of choice what would be our abilities, preferences and interests.

16 »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« (Rawls, 1971, p. 303).

17 »The ethical question becomes: what is the good life for someone who is entitled to a share of resources to which I am entitled to?« (Dworkin, 2004, p. 210–211).

18 »A capacity to imaginatively place ourselves in the position of others, distancing ourselves from private circumstances that limit and inhibit the exercise of judgement« (Arendt, 1982, p. 42).

19 See Aristotle (1908): »in action and in passivity alike it is possible to partake of justice incidentally, and similarly (it is plain) of injustice«.

20 See the Declaration of the Rights of Man and of the Citizen (1789), Article 6; the International Covenant on Civil and Political Rights (1966), Article 25 and/or Universal Declaration of Human Rights (1948), Article 21.

21 »Citizens who typically do not participate in open consultation processes and other forms of political activity are willing to participate in what are more intensive forms of political engagement. The fact that the invitation is limited to only a small number of (randomly selected) citizens appears to be an important motivating factor« (Smith, 2009, p. 67).

to community.<sup>22</sup> If this is not true – why then we have friends if we are on quest only for the self-interested gains? In the economic crisis is *a fortiori* time for the individual to take a larger part in *collectivism* (the history is full of examples where individuals in a time of need care at first for others and later for themselves). Can some form of »new-collectivism« be the major factor for the emergence of the new future order? It is not about to re-establish hierarchy that first comes to mind at ideas for the collective forms of management, nor for the liberal forms of market; it is about warning on the one-sided view of the hierarchic state and free market. There are also other elements, where the citizen is not only a passive or an active recipient of obligations or rights, but also *the* active element of community, who grouped with others, can represent massive transformative power.<sup>23</sup>

## 2.1 Active, Value-Driven Persons

The idea is not to call back the old forms of collectivism, but to upgrade and implement pluralism in the field of values. One of the largest values – justice – ancient Greeks sought in equality, which is somewhere between the individual and society. The middle between extreme individualism and collectivism, is in personalism:

»Its key advantage is that human is acknowledged at the same time as the essential social being and as a being that exceeds his sociality. Human personality and his environmental transcendental individuality are in his freedom, where autonomy and personal initiative are put in dialectical relationship with attitudes held by a man as the member of social wholeness to other individuals or to the other as a whole. The individual is therefore not over the whole, but is included in it on such way that precisely with this inclusion exceeds it as the personal, spiritual, free, and initiative being. In this sense we can say that man is member of society and also at the same time he is standing against it« (Stres, 1996, p. 49).

Modern person as a »persona«, as a mask, through which its character is shown, has nowadays the form of apparent logical contradiction: *tercium non datur*. Today's logical principle can exclude a middle part; a person through his »mask« can show more than what is physically behind it, more than he usually

22 Some claim that we should move from the »public interest« to the »good« public administration, which is a sign of moving back (or more) towards collectivism (both, the NPM and GPA are being customer focused): the »sound« public administration gives primary role to the public servant in helping citizens to articulate and meet their shared interests (the New Public Service as the orientation towards citizens is similar to Rawls's overlapping consensus; see Denhardt & Denhardt, 2002); »collaborative« PA stresses the idea of responsiveness with the significance of citizens actions and participation (Vigoda, 2002), where citizens influence on policy through their participation in the execution of public programs (Whitaker, 1980).

23 Recall on the so-called Arab Spring as the revolutionary wave of demonstrations and protests that has been taking place in the Arab world since December 2010 (revolutions in Tunisia, Egypt, a civil war in Libya, civil uprisings in Bahrain, Syria and Yemen, major protests in Algeria, Iraq, Jordan, Morocco and Oman, along with other protests in Greece, France, Great Britain etc. The massive transformative power was shown e.g. in Kennedy's inaugural speech: »Ask not what your country can do for you – ask what you can do for your country«.

thinks that he can do (and counts only what has been done<sup>24</sup>). A today's person must be the active person and society could be based on individuals, who are active, pluralistic element of society and who manifest themselves in the self-realization, spiritual<sup>25</sup> growth, autonomy and free will, who are going beyond their basic needs<sup>26</sup> and contribute to the overall growth of the society<sup>27</sup>. The modern individual is more than a private person that independently lives his (egoistic) life. People are becoming aware that the responsibility for the common good is on all of us, that indifference to the acts of government does not lead to overall success, that the ratio of command and control must receive new forms and that the values in community are our bonding material. This is also the notion of human capital<sup>28</sup> in which »the social contacts affect the productivity of individuals and groups« (Putnam, 2000). Fukuyama explains social capital as »shared norms or values that promote social cooperation, instantiated in actual social relationships« (2002, p. 27). Strong social capital is necessary for strong democracy that is essential for implementing the public goals throughout the society. It is the sort of the reverse vertical effect of human rights, where the effects do not refer in an individual's demand against the state's violation, but in help to the state or in promotion of human rights by individuals themselves. According to Dawn »important common key values – dignity, autonomy, respect, status and security – are being developed at a high level of abstraction in public and private law. Together these support ... paramount values of democracy, citizenship and participation« (1997, p. 218).

Such implementing values can also start with the collection and separation of different trash<sup>29</sup> and continue with other actions from which the community gains as a whole (e.g. assisting low-income people to achieve self-determination, free clinics, volunteers for different jobs). The civil society associations and NGOs that operate in the public interest are gaining their importance all over the world, are essential element of the notion

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24 An individual can become a hero although he is afraid of the opponent, a good speaker although he has powerful fright of stage, is good although he does not want to be. A human can go beyond himself.

25 »Ethical Government means much more than laws. It is a spirit, an imbued code of conduct, an ethos. It is a climate in which ... some conduct is instinctively sensed as correct and other conduct as being beyond acceptance« (Report of the President's Commission on Federal Ethical Law Reform, 1989).

26 In the »integrated wholeness« of Maslow the hunger drive (or any other physiological drive) and need for safety are at the bottom of a hierarchy of needs (Maslow, 1943).

27 Above mentioned statements are similar to the 2011 Edelman Trust Barometer Findings that are based on new Trust Architecture, which is consisted from transparency, engagement and profit with purpose in the difference from the old trust framework that has been based on controlling information, protecting the brand, standing alone, and focusing solely on profit. (<http://www.edelman.com/trust/2011/>)

28 Bourdieu defines social capital as »the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition« (Bourdieu, 1983, p. 249).

29 In Slovenia there is the project called »Let's clean Slovenia in one day!«. In 14th April 2010 attended more than 270,000 volunteers (which is more than 13.5% of the entire population of Slovenia) in one cleanup event that was inspired by the Estonian campaign Let's Do It 2008. The continuation of the project was organized again within the frame of the World Cleanup 2012 initiative, which started on 24th March by Portugal and Slovenia and will apparently lead to clean-up actions in over 80 countries until September 2012 (Dnevnik, 24 March 2012).



of governance; between classical liberalism and conservatism is located into the community-oriented individual, who wants his own well being to be reconciled with the welfare of other participants.

»Before and after markets there was and will be life thanks to social institutions that pre-date market systems by thousands of years and have demonstrated far greater resilience during times of scarcity. The most important is the gift economy, centred around the potlatch, in which an individual's value is measured not by what he or she has but by how much he or she gives away in presents« (Community Action Partnership, 2011, p. 9).

The practical examples are also hidden in »the core idea of *Wiki Government*... connecting the power of many to the work of the few in government« (Noveck, 2009, p. 14) and can be spotted already in »democratic experimentalism« of Dorf and Sabel (1998), where they name a system of collaboration as »learning by monitoring«<sup>30</sup> and is found also in the article 37 and 72 of the French Constitution. Noveck (2009) tells the story of Peer-to-Patent, where the Patent Office has integrated a volunteer network of self-selecting scientists and technologists into the formerly closed and secretive patent examination process; there are also other applications, which mashes up a wide range of local data to provide a picture of life and services at some area (e.g. cloud computing, AppsDC, DataGov, GovTrack, MAPLight, OpenSecrets, WashingtonWatch, FollowTheMoney, iLiveAt, FixMyStreet, MyBikelane).

### **2.1.1 One of the Means of Establishing the Active, Value-Driven Persons**

Because of the public money and power the state's mechanisms are probably the best platform for designing such transformations, but there is no real public strategy for the promotion of such personal-public collectivism, no public program that would contrary to the programs of political parties be based on the public preferences, established through the opinion pools, deliberation, mini-publics, e-democracy and other communicative means, but »[t]he possibility of using measures of well-being as indicators to guide government policies has attracted considerable recent interest« (Kahneman, 2011, p. 410). Leading political parties and coalitions still run the states mainly through their political programs, not through the peoples' desires. States could accede to the implementation of national surveys about what people want, not which party they will vote. It will be more objective than elections. A place of individual in modern society is in flexible zigzag pattern between him as the private and public person; as such he can be leaded only by sharing values that enable him to live decent and fulfilling life, where a state must help

<sup>30</sup> »The model requires linked systems of local and inter-local or federal pooling of information, each applying in its sphere the principles of benchmarking, simultaneous engineering, and error correction, so that actors scrutinize their initial understandings of problems and feasible solutions. These principles enable the actors to learn from one another's successes and failures while reducing the vulnerability created by the decentralized search for solutions. The system in which citizens in each locale participate directly in determining and assessing the utility of the services local governments provides, given the possibility of comparing the performance of their jurisdictions to the performance of similar settings, we call directly deliberative polyarchy« (Dorf & Sabel, 1998, pp. 287–288).

him to upgrade his active status by the usage of modern technology (e-voting, e-referendums, online voting on measures envisaged by state, delivering the proposals, warning of problems, etc.). The psychological convictions as values can be different in different states while all of them present some dimension of morality, which Dworkin names as the »background rights, which ... provide a justification for political decisions by society in the abstract.«<sup>31</sup> States should make the surveys about peoples' desires; on this way their basic values and needs would be enlightened and would form the base for the public strategies.

### 3 Management by the People – Wish or Myth?

Is active personalism only one of many theories about administration of decisions that are close to the developed and strong civil society, with »decentered state« (Black, 2002)<sup>32</sup> that has apparently moved from old welfare state through regulatory state to new »enabling state« (Gilbert, 2005)<sup>33</sup>, where command and control applies across all social and economic life? The new (more theoretical) modes of governance (in relation to the old one of command and control) have been in the EU particularly exposed with the emergence of the Open Method of Coordination (OMC)<sup>34</sup> that emphasizes the notion of European social dialogue. Despite different ideas and means for the public participation evidences show that participation of civil society is marginal:

»Although 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« (Smismans, 2006, pp. 18–19).

31 »I call a principle a standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice of fairness or some other dimension of morality« (Dworkin, 1978; p. 22, 93).

32 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« (Black, 2002a, p. 6).

33 »Policies designed to advance the march toward private financing and delivery. Approaches are concentrated on increasing private financing and on increasing the production and delivery of goods and services by the private sector« (Gilbert, 2005).

34 »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« (White Paper on Governance, 2001).

Above mentioned conclusion is evident also from the statement in the *White Paper on European Governance* which refuses legal rules which would »create excessive rigidity and risk slowing«<sup>35</sup>, or from the statement that »the guiding principle for the Commission is to give interested parties a voice, but not a vote« (Communication from the Commission, 2002, p. 5) or from concrete consultation procedure, where the individuals and/or civil society are very marginal element.<sup>36</sup> Reich based on the real-world applications warns on difficulties at public deliberation: it is not easy to manage well, the public will wish to avoid difficult issues, many people will resent the tensions and ambiguities inherent in such deliberation, there are procedural obstacles, inordinate time and resources, cycle can easily get out of control, there is no guarantee that resulting social learning will yield a clear consensus at the end. Instead the process may exacerbate divisions within the community and make it more difficult to achieve consensus in the future (1994, pp. 136–137). In the U.S. large regulated parties enjoy much greater presence in agency decision making processes than do the public interest groups and other parties (they are also the most active in the FOIA cases<sup>37</sup>). The US Senate Committee generalized the results of its findings as follows:

»On 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« (Study on Federal regulation, 1977, p. 12).

Today's conditions in the U.S. can still show on lack of adequate participation as it is shown in the rule of law restoration.<sup>38</sup> How we could achieve

35 »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« (Paper on European Governance, 2001, p. 17).

36 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, 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.

37 »FOIA is most frequently used to obtain information that an agency has required third parties to fill with it. 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 % came from industry« (Breyer et al., 2006, p. 687).

38 »Rule of Law Restoration Efforts Suspended for Lack of Adequate Participation: the two-pronged idea was quite simple: find candidates who would pledge to abide strictly by the rule of law while in office, and find voters who would vote only for such candidates. The first part was a surprising success in the 2010 election cycle, with 3,000 federal and state candidates invited and 71 taking the Candidate Pledge. The grand failure, however, came with the Voter's Pledge efforts. Even though we served up somewhere around 19,000 pageloads at the ROLR website in 2010, only 24 voters signed the Voter's Pledge. This number should have been in the thousands« (Pelham, 2011).

a balance between the teoretical »enabling state« (Gilbert), »responsive state« (Braithwaite), »decentring state« (Black)<sup>39</sup> or »regulatory capitalism« (Levi-Faur and Parker, 2010)<sup>40</sup> with the practical administration of public affairs? »Participation in agency decision-making processes 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« (Croley, 1998, p. 129, 133). Practice shows that »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« (Levi-Flur & Parker, 2010, pp. 548–549). A strategic capture (the iron triangle) is connected with the bureaucratic state that is still present with the authoritative commands and controls despite or even because of the neo-liberal ideas that at the side doors enable regulation in the new form of re-regulation (Vogel, 1998) and new state coercion.<sup>41</sup>

### 3.1 Barriers for the Public Management by the People

The original spoilage<sup>42</sup> of human nature (Hobbessian doctrine of *bellum omnium contra omnes*) conditioned ideas about (and then emergence of) the principle of separation of powers<sup>43</sup>, where the state was seen as the idea

39 »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« (Black, 2002b, p. 112).

40 »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« (Levi-Flur & Parker, 2010, p. 551).

41 »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« (Crawford, 2006, p. 471).

42 We could say that division of power results from the corruption of man: already Thomas Aquinas was talking about the »fall of man into sinfulness« (1972). Hobbes was the first who explicitly rejected Aristotelian view that man is by nature a social being; instead he argues that human is an individual. The representatives of the contractual theory of the creation of state comes from the natural state, where the »man...is presumed to be corrupted from nature« (Hobbes, 1651, p. xix) where »the individual takes care only for himself« (Locke, 1988). That was the reason for the government to be trusted into the hands of more people who can control and restrict one another.

43 James Madison emphasized that »the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny« (1788). See also Montesquieu (1989, p. 157).

of omnipotent sovereignty with an essential mission to coerce citizens to become good (Aquinas, 1964). Despite the prevailing ideas of agentification<sup>44</sup> or rolling back the state<sup>45</sup> in our time, the actual state of affairs can be opposite: even in more democratic forms of government citizens still lack the access to information (if they do not know there is one), the technical and/or special knowledge or lack the time and experiences. Weber still has right and even though formal decision-making powers rest on citizens, this does not accurately reflect the balance of power.

People must be guided even in the democratic forms of decision-making, if we want the peaceful sessions, equality of voice and time to debate about issues and needed corrections if propositions would be illegal or impossible (remember on the mentioned Plato's guided dialog with a slave of *Meno*). And the public servants are still the ones that mainly implement or lead making the decisions with previously established directions:

Our analysis of mini-publics, PB [participatory budgeting] and internet discussion forums, in particular, highlights the fundamental role that active facilitation plays in realising such rights, principles and dispositions. Citizens do not necessarily come fully formed in a deliberative sense: facilitators [the public officials] continually shape and reshape the conditions for deliberation (Smith, 2009, pp. 197–198).

States still largely operate within the framework of the classical constitutional mechanisms of checks and balances, where the executive branches are in front of the legislative or judicial one and Lane's idea about outdated administration (2009, p. 154)<sup>46</sup> is premature. States include civil society with the concept of the »individual as a citizen, not as a consumer« (Feintuck, 2010) mostly in the field of environmental regulation (under the Aarhus convention) and media regulation (corporative structure of administration bodies and radio or television broadcasting), while otherwise they still operate within organisations that are hardly and slowly open to their surroundings. We cannot overlook also the findings of Fishkin who had in experiencing with deliberative pooling (deliberative pool as a large number of citizen who complete a questionnaire with the same questions before and after the event) established that »the most systematic evidence of opinion change

<sup>44</sup> 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« (Cole & Douzans, 2010, p. 404).

<sup>45</sup> »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« (Christenseb & Laegred, 2005, p. 11).

<sup>46</sup> »The idea of development administration appears outdated. It smacks of planning and its rigidities as well as government mistakes. Public policies promoting economic and social development are not, first and foremost, an administrative task, as it involves the coordination of the efforts of people trained in different professions. A long-run process of development seems more likely to come about when a country offers a stable institutional framework, which allows for individuals to pursue their projects without impediments from bureaucrats« (Lane, 2009, p. 154).

comes from deliberative polling« (Fishkin, 1997, p. 214): if citizens are more acknowledged with some matter their opinions change and they remind us of the civil servants with more knowledge and experiences. The latter ones can be Sunstein's »the predeliberation median« that is »the best predictor of the direction of the shift. When group members are disposed toward risk taking, a risky shift is observed. When members are disposed toward caution, a cautious shift is observed« (Sunstein, 2009, p. 17). »An isolated person can easily change the opinion because it is not stabilised by any strong loyalties. Ideas and values only become strongly entrenched when they are embedded in institutions« (Douglas, 2012).

How could we then make a new form of coexistence between the market, state and people, where not only the economic interests, but also the management of public affairs along the existing and powerful state's administration will prevail? The answer could lie in direction in which »the institution works when it acquires a support from the harnessed moral energy of its members« (Douglas, 2001, p. 72). The new solutions can be therefore also in the old institutions, not only in increasing peoples' rights, but in broadening opportunities for the independent co-operation of persons and groups with the government and between themselves, where persons could better realize their own, but also in to the community oriented potentials. This form can be established if officials would look through the publics' eyes, while the latter should look through the public institutions' eyes. One of such ideas is presented in »libertarian paternalism« that is »a relatively weak, soft, and nonintrusive type of paternalism because choices are not blocked, fenced off, or significantly burdened« (Thaler & Sunstein, 2008, p. 5). Within this concept the states and other institutions are allowed to nudge people to make decisions that serve their own long-term interest; bureaucracies can be therefore the choice architects, because they organize the context in which people make decisions. There is no neutral decision.

#### **4 Representative Public Administration and Its Limitations**

Today's interdisciplinarity and multidisciplinary of fields and conditions require from states to enable effective means for evolving the human nature that is a more important factor than constitutional arrangement itself,<sup>47</sup> but without sacrificing transparency, control and accountability, i.e. the rule of law. The latter, with the combination with the merit system as the process of hiring public employees based on their ability to perform a job, rather than on their political connections (on the basis of open competition) that includes also equality before the law – forbids passive representation by which officials could reflect the composition of society. Within the frame

<sup>47</sup> Among the most competitive countries in the world in 2010 were Switzerland and Singapore that have a different constitutional arrangement, but nevertheless they have the best public institutions in the world. Result shows that what matters is the commitment, values, energy and personal contribution, no matter in what environment or circumstances the states operate. See *The Global Competitiveness Report 2010–2011* (2010).

of active representation the bureaucracy should reflect in its outcomes only the public values; active officials should look on the society as a whole, not only at particular group, unless there is a positive statutory exception. If we limit our view from the second part of the 20<sup>th</sup> century onwards, there were different movements (new public administration, new public management or reinventing government, new public service) that want, at their core, to re-install the self-referential, self-renewing public culture of public administrations<sup>48</sup>; they depended more on individual's attitude than on states' actions, more on values than on rules. A possibility to rethink the classic hierarchic model and the separation of powers (that »heal« human defects) doctrine with today's complexity of more complementary, pluralistic and net-centric government of all for all (where comes at the hierarchic top also confidence in a man and care for coexistence of the people, nature and environment) can be one of the paths by which we can find new solutions. In doing this we could start with Hobbes: against the original spoilage of man he presents a *Civitas*, a commonwealth that emerges when »a multitude of men do agree ... that to whatsoever man, or assembly of men, shall be given by the major part the right to present the person of them all ... to be their representative« (Hobbes, 1904, p. 120). Representation is a relationship of rights and responsibilities, which he calls »in divers occasions diversely; as a representer, or representative, a lieutenant, a vicar, a deputy, a procurator, an actor and the like« (*ibid.*, p. 110). Hobbes's representative cannot do injury or injustice to other people (because it is presumed that every subject is author of all the actions and judgements, like they were his own); Pitkin under the drawbacks of such thinking presents representation »as acting for«:

»A man represents what (or whom) he looks after or concerns himself with, the interest that he furthers ... [where a challenge is] to construct institutions and train individuals in such a way that they engage in the pursuit of the public interest, the genuine representation of the public ... to remain critical of those institutions and that training, so that they are always open to further interpretation and reform« (Pitkin, 1972, p. 116, 240).

The sense of representation is by this definition and its number present at large within the appointed officials rather than within the elected ones, in the administration, more than in legislation. Legal instruments *per se* are imperfect in achieving their aims; they can be achieved in »the cultivation of persons capable of looking after the interests of others in a responsive manner« (*ibid.*, p. 239), where persons with the official powers can have their role: if leaders wish to institute positive norms or to reduce the impact of negative behaviours, the tremendous influence of modelling behaviour cannot be overlooked. »Well motivated executives send credible signals by

<sup>48</sup> It is culture that is self-referential or autopoietic (Teubner, 1988), self-demanding and irrelevant of goals: '[r]einventing government is about creating public organizations that constantly look for ways to become more efficient. ... It is about creating public organizations and systems that habitually innovate, that *continually improve their quality, without having to be pushed from outside. It is about creating a public sector that has a built-in drive to improve – what some call a "self-renewing system"*' (Osborne & Plastrik, 1998, p. 14; 2000, p. 4, *emphasis added*).

taking actions that are more costly for ill-motivated actors than for well-motivated ones» (Posner & Vermeule, 2006, p. 894). In an ever-present absence of some unique and universal social order, there can be at least a common vision that could in every state start from the values of cooperation and participation, from the active role of all actors in the public field, from trust and development of possibilities for enhancement of human personality. Despite the apparent democratic need for a wider public participation (at least at the important public matters) in the current position of society a political citizen is consummated in the role of public servants who on average with performing of their official powers and duties have greater effect on the state's operations than citizens. As it was with the above-mentioned difficulties for the public participation at large, there are also difficulties with the public servants. »Laws and regulations are often ineffective guides for administrators trying to determine what to do. However trite this observation may seem, laws and regulations are better at telling administrators what not to do than what to do« (Fredericson, 2010, p. xiv). How could they know »what to do«? A general recipe against impartiality of the public servant would be an oblivion of his own situation: oblivion of the self interest and presentation of arguments for which he believes to be accepted because of their content, which is or can be shared with other people. The public official can depart from the citizen's role and *à la* Rawls or Habermas accept and/or reject proposals of others according to better rationally discussed arguments. It is she/he who largely produces the political legitimacy of public decisions. Political legitimacy is not created in the way where citizens are placed in the role of public servant, but where the latter one is put in the role of the first ones. If they approve reasoning of the public servant then legitimacy of his decision is established. This is the value of transparency or what Rawls (1971) calls the publicity principle that orders the basic structure to be publicly known and the justifications for these principles must be also acceptable to citizens.

Although bigger emphasis about influencing is placed on the public officials than on people, we must not overlook the mistakes that they do as all ordinary people. People are complaining on bureaucracy all over the world and if we could just replace the public officials with people that work outside of it, it would be probably the same as it is now. At regulation it is therefore necessary in addition to the expected-utility model to take into account the range of psychological factors that relate to the cognitive illusions and framing, unrealistic optimism, self-control, self-serving bias, overconfidence, anchoring and calculations that are present in human mind regardless of the people's location or position. »Behavioral decision theory that studies how people actually behave in situations of choice« (Jones, 1999, p. 307) must not be overlooked; it distinguishes intuition from reasoning because »people are not accustomed to thinking hard and are more often content to trust a plausible argument that quickly comes to mind« (Kahneman, 2003, p. 699). These psychological limitations have never been really (to a sufficient level) studied at proposing the draft rules. Although lawyers are usually the ones



who prepare bills, they sometimes do not know about reasons, which have led even them in preparation of legal texts and about the probable responses of addressees of norms. The principles of justice and fairness are in open opposition to such stance; one of the »excuses« for such behaviour can be the loss and blame aversion: people are more (twice as much) averse to losses<sup>49</sup> than for gains, and administration is more averse to avoiding blame than seeking new niches.<sup>50</sup> The public administrations should in the future have more people that are experts in problem solving, decision-making, communication, human behaviour, and social relationships. How could we overcome the psychological limitations if the public officials still have the major role in addressing the public problems? They should be more aware of these limitations with the help of people trained in psychology as the science of human mental functioning and behaviour.

#### **4.1 Effects of Representative Public Administration**

Different public and legal culture can emerge by revolution, through small changes and deviations and by the rare tectonic changes of opinions; since the latter two are preferable from the time perspective and desired goals, we should look at the largest public institutions where *de facto* values are »formally installed« and can be as such also changed. We must be also aware of the practical factors that can cause a real change: at the core of the administrative science and the civil-service reform there is »a moral preparation for what is to follow. It is clearing the moral atmosphere of official life by establishing the sanctity of public office as a public trust« (Wilson, 1887, p. 358)<sup>51</sup>. Trust is a reciprocal function between what is promised and what is delivered. If we want a better representative bureaucracy (it represents the public interest in its daily activities) the latter should look on things from a positive stance, or simply urges »to do good«. Good of society was already the ancient ideal (Aristotle's virtues of prudence, justice, temperance and courage) and it seems that this (ambiguous) idea does not change with time; it can be also understood as the complementary part<sup>52</sup> of justice. With this in mind careful *ex ante* preparation and *ex post* implementation of decisions and operations can unite hope and trust; with such stance we can overcome also the psychological limitations if they will be shown as such from

49 »The value function is...steeper for losses than for gains by a factor of about 2–2,5« (Kahneman, 2003, p. 705).

50 »Organizational structures will go on being crafted in baroque complexity to ensure that no one turns out to be responsible for anything when bad things happen. ... it is mostly to politics—the social process of naming, shaming, and claiming—that we need to look for controlling this [blame avoidance] phenomenon« (Hood, 2011).

51 Political trust is the »judgment of the citizenry that the system and the political incumbents are responsive, and will do what is right even in the absence of constant scrutiny« (Miller & Listhaug, 1990, p. 358).

52 »Justice draws the limit the good shows the point. The right and the good are complementary, and the priority of right does not deny this... although... a political conception of justice must leave adequate room for forms of life citizens can affirm, the ideas of the good it draws upon must fit within the limits drawn – the space allowed – by that political conception itself« (Rawls, 1988, p. 252).

the experts. Despite the rather empirically unsuccessful theory of representative bureaucracy in its classical way (with passive and active representation) we could focus our attention only on active representation that could give better results: Andrews et al. (2005) based on the survey of eighty English local authorities with 846 informants conclude that

»the results reported here suggest that public management matters, and it matters in shaping the ways that representativeness in the bureaucracy itself has its impact. The findings strongly indicate that a reactor strategy on the part of public organizations impedes authorities' performance, at least when performance is measured via the perspectives of consumers. Prospector strategy may help, at least via its impact on actual audited performance, if not on consumer perspectives directly. It may be that a prospector stance pays its dividends in ways that are relatively invisible to the general public, at least initially« (*ibid.*, p. 502).

A further development in the literature is also to incorporate the concept of symbolic representation, which works cognitively on the public. When the public servants share the identification, experience, and characteristics of a portion of the public, that audience will perceive the actions of those bureaucrats as legitimate, even if the bureaucrats are not purposefully representing that group. Nick Theobald & Donald Haider-Markel (2009), by examining citizen attitudes about actions by police officers, show that actions by bureaucrats are more likely to be perceived as legitimate if citizens and bureaucrats share demographic characteristics. This goes hand in hand with Lipsky's Street-Level Bureaucracy: Dilemmas of the Individuals in Public Services (1980).<sup>53</sup>

We can ensure an impact at effectiveness and efficiency of the public administration with values because they have their foundations in honesty, credibility, communication and in a sense for community. Values are glue to society and law.<sup>54</sup> A regulator must of course respect the impact analysis, cost-benefit analysis or better regulation tools as the decision making techniques, but he must be aware also of the dispersive effects of regulation, of overlapping effects and of mutual interactions of different parts. A decision of what to measure, by what means, to what we should give our attention and for how long, is at first in the hand of bureaucracy. These effects are the real representatives of values that serve as filters through which the decision-making techniques must go. If we want for the normative system to be realized in life as the balanced system of rights and duties, there must be a counter

53 Lipsky's central premise is that street-level bureaucrats (policemen, teachers etc.) daily have to make decisions that are not dictated by the mission of the organizations they work for, or the rules they are supposed to enforce. Street-level bureaucrats thus make policy as a result of their behavior, they directly represent their institutions.

54 Values are similar to standards. »When lawmakers lack current information about the regulated issue, they adopt standards because they expect information to be revealed through implementation and enforcement of legislation. Standards are useful to cope with legislative uncertainty about future events. Standards are more adaptable [than rules] to surprises, since judges can more easily cope with unexpected shocks in the regulative environment through adaptive adjudication« (Parisi & Fon, 2009, p. 21–22).

system of the inner weight, distributed power and possibility to influence other and change our work under the guidance of values. There are many laws that include the principles of honesty, legality, impartiality, equality, professionalism, integrity etc., while in practice they are never tested *per se*. A legal norm should have its content given through values, not *vice versa*. In highly interdependent and rapidly intertwining world of relations between individuals, groups and states concretisation of rules is out-dated almost upon their admission;<sup>55</sup> directions can be established with more general concepts and rules, but they have to be run by values, followed by *trust* and built by assistance. Only then they can be the cure for the bureaucratic »diseases«.

## 5 Conclusion

Societies are faced with the decline of representative democracy, of voter participation, which can *a contrario* even further reinforce the classical idea of the need for the elected political representatives and professional administration. On the other hand there are non-stop present questions about legitimacy of their decisions. Social and natural conditions indicate that state cannot alone solve all problems and classical representative democracy cannot be the only answer. There is no single recipe that would fit to each country; there is only a sincere commitment to do things right. An answer to this depends on the different objective conditions and environments; what can be confirmed as the subjective idea for public management, depends very much on a personal action – be it of a politician, public servant or citizen. On these premises can be based a different social vision of governmental action that should at first begin to promote values »in house« i.e. in the state's administration (it could start e.g. with tackling corruption) that should path the ways for the public participation at large.

A next generation of the public administration should be more focused on collaboration with »citizens as partners« (Vigoda, 2002), because people are all that the states have beside their public apparatus. And what people have other than their public apparatus? If deliberation can be extended outside the Parliament, it is also clear that democratic representation can take place wherever occurs; Kingsley, Mosher, Long, Kristov, Nachmias, Rosenbloom and others have already stated the importance of the representative bureaucracy decades ago.<sup>56</sup> Regardless of centuries long negative connotation

55 »In my own view, the proper explanation of this requirement [that a political community extend to everyone the same regime of principle] fixes on how the community actually uses its powers to intervene in citizens' lives, not on the reasons that different officials have given for such intervention in the past« (Dworkin, 2006, p. 16).

56 The main parts are assembled in Dolan & Rosenbloom (2003). Already Long stated that »the Civil Service as a body is a better sample of the mass of the people than the Congress...[and] likely to be more responsive to the desires and needs of the broad public« (1952).

of bureaucracy<sup>57</sup> the basic human characteristic of hope implies impartial, in the public interest oriented bureaucracy. Since particular officials still have the best chances of influencing at specific fields, they must not establish dialogue only with politicians, but also with people; by this way an expert would in his mind represent its field also from the view of majority of citizens. Despite of empirical and/or scientific failure to clearly demonstrate impacts of the theory of representative bureaucracy, we should not forget that the public administration is as much a science as it is also an art: there are many things in the world that cannot be tested, measured, predicted or even said, but we nevertheless almost on a daily basis submit to them.

A slow aftermath of the economic crisis can be enhanced through an apparent paradox of emphasizing the community values in the public administration, in education, training and examining knowledge of the public officials, on the fields where financial drawback are now the most eminent. Who else will implement the public goals if not the public officials in today's arrangement of states? In different conditions and surroundings there is no single recipe for any kind of new government arrangement that would fit to all of them; only the laws of logic are apparently universal and even they can be sometimes confusing to us; in the current state they tell us that a new public strategy is needed, that states should establish what people really need and want, that states should be transparent in forming their contexts in which decisions are made and that states cannot be liberal neither paternalistic, but somewhere in between. Managing of human resources by words is the crucial first element, while energy, trust, confidence, and awareness for the non-stop improvement of quality of life, without having to be pushed from outside, are beyond them. They »grow« as virtues through implementation. A real success of all procedures exists only in a psychological change of mind, in »open-mindedness«, honesty and other values that through the modelling behaviour affect people inside and outside of the public administration. To do this we should at first educate and reward value-driven individuals that could »pull« with their modelling behaviour also others on a path of values, justice and equality. It seems that we should restore the knowledge about importance of values given by the ancient philosophy.

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57 Hart-Dworkin debate and the separation thesis of legal positivism is focused on the relation moral – law mainly from the view of the judges and not of the public servants, although they are not excluded from the wider point of view as legal officials. The propositions of law in the light of the values identified at the jurisprudential stage speak for Dworkin, because they are closer to people's (not only judges') reality: »[a] proposition of law is true, if it flows from the principles of personal and political morality that provide the best interpretation of the other propositions of law generally treated as true in contemporary legal practice« (Dworkin, 2006, p. 14).

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POVZETEK

## **PREDSTAVNIŠKA JAVNA UPRAVA KOT ZGLED RAVNANJA NOVE BIROKRACIJE**

*Ključne besede: pozitivni posameznik, javna participacija, javne vrednote in aktivna predstavniška birokracija*

Vse bolj velja prepričanje, da tako države kot trgi niso vsemogočne institucije. Na videz nekoliko paradokсно, a tudi sam koncept socialne države, ki naj bi odpravljala stiske in zagate državljanov – k čemur je prispevalo svoj del tudi novo javno upravljanje s poudarkom posameznika kot potrošnika, ki samo pričakuje (»value for money«), in nič (ali ni dovolj), ne daje v zameno – doprinesel k brezbriznosti do drugega in samovšečnega ravnanja. V kriznih časih je potrebna višja udeležba vsakega posameznika, saj sta demokracija in samoizražanje prisotna v čisti obliki šele, ko so izpolnjene osnovne fiziološke in varnostne potrebe (hierarhija potreb po Maslowu). Z naraščanjem vse večje razdrobljenosti, soodvisnosti in kompleksnosti bi moralo naraščati tudi zavedanje, da država ne more vsega storiti, kot »eden za vse«, kot je to lahko v času utilitaristične ekonomije blaginje, pač pa da potrebuje pri tem dobršen del pomoči. Čeprav sodelovanje javnosti pri upravljanju javnih zadev postaja vse bolj pomembno, članek izhaja iz predpostavke, da se da svobodne in demokratične elemente v danih okoliščinah najhitreje doseči s promocijo vrednot v javni upravi. Predpostavka izhaja iz predstavniške birokracije, tj. iz aktivnega predstavljanja, medtem ko naj bi klasično pasivno zastopanje družbe še vedno temeljilo na ideji pravne države oz. strokovnega sistema zaposlovanja javnih uslužbencev. Kljub temu, da smo priča vse večji diferenciaciji mednarodnih institucij in povezav, iz katerih je zelo težko izluščiti nekatere skupne vzorce, se zdi, da bo v tej mešanici klasičnih in neoliberalnih idej ter različnih upravnih modelov država še vedno dosegala cilje prek sistema javne uprave.

Soočeni smo z dvema nasprotjema: kljub dejstvu, da bi radi imeli več neposredne demokracije, se slednja z vse bolj nujnim povezovanjem in sodelovanjem med državami na globalni ravni umika (demokratični deficit), hkrati pa bi radi bili priča strokovno izvršenim demokratičnim odločitvam vse manjšega in varčnega birokratskega aparata (upravni deficit). Ali bi lahko rešitev iskali v križanju teh delov, tj. v demokratični upravi? Namesto da bi reformirali celotno državno organizacijo, bi lahko v državah s parlamentarno demokracijo, kjer danes prevladuje – izvršilna veja oblasti – »vgradili« več demokracije v samo javno upravo. Ta ideja je blizu »reprezentativni birokraciji«, ki zavrača dihotomijo med politiko in upravo in nakazuje idejo, da organizacije opravljajo delo bolje, če delovna sila v njih odraža značilnosti samega prebivalstva. Ali lahko na javne uslužbenke gledamo kot na državljane, tj. ali bi slednji delovali kako drugače, če bi delovali v javni upravi? Praksa kaže, da državljani izkazujejo enake lastnosti, kot jih pripisujemo javnim uslužbencem, če bi bili ali so postavljeni

v birokratski model upravljanja. Predstavniško birokracijo so preučevali številni avtorji (Long, 1952; Meier, 1975; Mosher, 1982, Selden, 1997, Meier et al, 2001; Keiser et al., 2002), vendar doslej niso bili uspešni pri vzpostavitvi kakršnegakoli celovitega, znanstvenega okvira. Ali je razlog v tem, da večinoma ne gre za znanost, pač pa za etična in moralna izhodišča, za človeštvo?

Članek izhaja iz predpostavke, da javna uprava ne deluje brez vrednot. Javna uprava ni nikoli bila in ne bo nevtralna dejavnost; čeprav je zelo blizu politiki, lahko deluje v okviru demokratičnih vrednot, in je lahko – in celo mora – biti občutljiva za javne potrebe in cilje. Članek dokazuje, da je uprava tako uspešna in učinkovita, kolikor so javni uslužbenci psihološko usmerjeni v doseganje zelenih rezultatov v spreminjajočem se okolju, seveda s pomočjo javnih institucij, v katerih delujejo. Prispevek v nadaljevanju zato izhaja iz posameznika, ki ga usmerjajo vrednote v personalizem kot zmes posameznika, ki ima pred očmi skupnost kot celoto, in nato podaja nekatera sredstva, prek katerih se lahko te, aktivne, vrednotno usmerjene posameznike »zbudi«: ankete javnega mnenja z uporabo sodobne tehnologije bi bile lahko najbolj obetajoča sredstva. Nasproti egoizmu in sebičnosti na srečo stojita solidarnost in kolektivizem. Racionalna teorija izbire (angl. *public choice theory*), ki temelji na egoizmu, sebičnosti posameznika in samo lastnih koristih, se sreča z nepremostljivimi ovirami, ko se sooči z idejo solidarnosti in medsebojne pomoči. Posameznik ni le sebično bitje, pač pa je tudi altruist, prostovoljec, ki ni le zaverovan sam vase, temveč tudi v druge, v skupnost, v pomoč sočloveku (to bi vedel povedati vsak, ki je rešil sočloveka iz nesreče). Ko bi bili ljudje res le sebični in v iskanju lastnih koristi, ljudje ne bi glasovali na volitvah, ne bi pomagali tujcem, ne bi se borili za varnost države, plačevali davkov in podobno. Ideja pomoči je močno prisotna v vseh posameznikih – tako tudi v javnem sektorju. Tretje poglavje v članku se osredotoča na ovire za upravljanje ljudi z javnimi zadevami in je precej pesimistično, saj iz vrste podanih dejstev izhaja, da ljudje navadno tudi v primerih, ko jim je dana možnost participacije, le-tega ne izkoristijo v dovolj veliki meri (kar se s potekom časa celo zmanjšuje). Ta del sicer navaja številne teorije o sodelovanju javnosti, a vendar *a contrario* trdi, da države še vedno večinoma delujejo v okviru praktičnega ali klasičnega upravljanja javnih zadev prek javnih institucij. Upravni aparat bo v ne tako daljni prihodnosti še vedno prevladujoča oblika delovanja države; ljudje s svojimi vsakdanjimi življenjskimi težavami ne bodo zmogli opravljati nalog uprave, katere postajajo tudi vse bolj zapletene. Četrty del članka naredi zmes med demokracijo in javno upravo v pojmu reprezentativne javne uprave in nakazuje potencialno smer aktivne, tj. predstavniške javne uprave. Čeprav obstajajo oz. bomo tudi v prihodnje priča napakam v javnem sektorju, ne smemo nikoli spustiti izpred oči dejstva, da morajo pravna pravila temeljiti na vrednotah in ne obratno. Rawlsova »tančica nevednosti« in zlato pravilo oz. etika vzajemnosti so pravzaprav vse, kar javna uprava potrebuje na začetku v smeri skrbnega upravljanja in izvrševanja javnih nalog.

Predlagana strategija dajanja poudarka na javne uslužbenke je v času varčevanja na videz nelogična, a vendar bi bila lahko učinkovita: več javnih sredstev bi bilo treba nameniti za izobraževanje, usposabljanje in praktične implikacije dobrih praks iz drugih držav. Čeprav je v našem času, ko so znižanja javnih sredstev in odpuščanje vsakdanji jezik, to težko doseči, ne smemo pozabiti, da človečnost ni nikoli odvisna od financ – zaupanje javnosti, pripravljenost, upanje in druge vrednote so toliko bolj potrebne prav v kriznih časih. Začeti bi moral vsak pri sebi kot posameznik, usmerjajoč se proti koristim skupnosti kot celote. Upravljanje človeških virov z besedami, z motivacijo je prvi ključni element, medtem ko so energija, zaupanje in zavedanje za nenehno izboljševanje kakovosti življenja (ne da bi pri tem bili v to prisiljeni od drugih) izven njih. Ti elementi »rastejo« kot vrline med izvajanjem in se kažejo kot upoštevanja vredne vrednote. Pravi uspeh vseh postopkov obstaja le v psihološki spremembi miselnosti, v odprtosti, poštenosti in drugih vrednotah, ki s posnemanjem drugih vplivajo na ljudi znotraj in zunaj javne uprave. Prvi pristop je v izobraževanju in nagrajevanju posameznikov, ki bi lahko bili s svojim vedenjem zgled drugim na poti vrednot in enakosti. Vse bolj se zdi, da bi morali obnoviti znanje o pomenu vrlin in vrednot, ki jih je poznala že antična filozofija.