Good Administration Quo Vadis
Legality or Efficiency?

Naomi Reniutz Ursoiu
Abstract

In the Council of Europe’s Recommendations 2007(7) good administration is an aspect of good governance, set to deliver economic efficiency through profit oriented public services. Public administrative systems are compelled to become part of the globalised puzzle of market and to adjust their democratic means in dealing with collective interests. The metamorphosis requires different organizational and structural setups, rooted in the leading trends of the 21st century: consumerism, new public management, technology and rights explosion. We might witness the promotion of a ‘consumer model of good administration’, a development problematic in terms of legitimacy. Thus we militate for the traditional Weberian structures based on legality, which although contended to be an anachronism, can be efficiently readjusted following standards of good administration firstly and of good governance subsequently. We argue that, macro-decisional level is circumscribed by an all embracing concept of good governance oriented towards economic efficiency, but the micro-levels of public spheres should be centred on good administration standards, the shield and sword of the individual in its interaction with the public administration based on the rule of law and not on economic performance.

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Good Administration Quo Vadis – Legality or Efficiency?

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1 Some introductory remarks

The latest threats of financial crisis and its impact on the performance of governments (on the delivery of services in particular) has put public administration high on the governance agenda. In this context, there may also be attempts by various groups\(^3\) to make the administration into a weapon under their control and these conditions make it difficult for administrative readjustment incentives, but also deprive individuals of their rights.\(^4\) Thus the ideal forms of administration and government are locked in a contest whose stake are the control and the size of the public organizations, the competences, ethical foundations, staffing, resources and results of public sector. The risks are higher as public administration is rarely provided with clear and stable criteria of success and failure. Making sense of contemporary public administration, then, requires an understanding of the complex system of institutions, actors, rules, values, principles, goals, interests, beliefs, powers that are merged together. The legal, political, managerial or economic doctrines, mass media, and individual citizens are likely to hold different and changing meanings for the concept of "good administration". Depending on the meanings attributed they are likely to want the administration to serve a variety of principles, objectives and interests that are also changing and not necessarily retain a certain consistency. Each concern, perceived to be central to the public administration performance, may be a possible source of legitimacy as well as criticism and if it undergoes changes, then so it follows the concepts of good administration.\(^5\)

The Council of Europe’s Recommendation (2007)\(^7\) mentions that "good administration is an aspect of good governance". The theory that administration is part of governance is all accepted and it may have started with authors like Max Weber and Fayol and

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\(^3\) By various groups we mean different groups of interests- legitimate or obscure through their organizational incentives- that have the necessary means in influencing and lobbying for changes of public administrative patterns and decisions such as environmentalist, human rights activists, industrial or financial corporations, etc


continuing with the changes advocated by institutions like the OECD, the World Bank and the IMF. Once that good governance has become the corner stone of political debates concerning democracy and rule of law in an ongoing changing environment, no matter local or global level, good administration - as a desiderata for any kind of administrative action - became also one aspect of good governance. However this looks more like a generalization and despite this political prioritization of the rule of law, little is still known about how is expressed in public administration, or about the specific relationship between public administration reforms and good governance in developing (in transition) countries, the cause of the rule of law deficit or how to raise and better integrate rule of law dimensions in efforts at public administration reform.

Departing from the above mentioned dilemmas in this paper we will try to find out the nature of the interplay between the two concepts and to foresee till what degree they mold each other with regard to their legal content. For establishing a connection we will further enquire the fundamentals of each concept, their parameters and dimensions. For analyzing the concept of good administration we will also explore its meaning in relation to the three elements that are inherent to public administration namely organization (structures and processes), functions and resources. The quest for the most appropriate form of organization is relevant for establishing the content of good administration with regard at the values that public structures are thought to promote. The form of organization - market, network or bureaucracy - is questioned in terms of legality as opposed to economic efficiency and their impact over the individual - the common citizen or the ‘consuming user’. Further on we examine the significance of good administration in relation to its effects and purposes, and will conclude with an assessment of resources in terms of accountability and efficiency, with emphasis on performance indicators. Each of these aspects posse a quest also for the specific parameters of good governance - transparency, participation, efficiency, accountability - a concept which will be approached from a legalistic perspective without taking it out of the socio-economic-political context where it took shape from the very beginning. It is necessary to mention that the paper is not intended to be construed on references to a specific national or regional model, but it is developed mainly departing from the European and international intergovernmental organizations’ at-
tempts to deal with the latest trends that are occurring in the public sectors.

2 Public space, its dilemmas and the quest for good governance

In the next sections, in order to identify a coherent (not necessarily stable) content of the concept of good administration, we will approach some variables that circumscribe public sphere such as: the limits of discretion, the continuous interplay between public-private spheres and the colonizing power of administrative law which purport in themselves problematic if not antagonistic trends. Further on we are inquiring the frame of good governance as an attempt to address these contradictions. Some remarks are also required in order to understand how exactly good governance became a legal concept.

2.1 Contradictory trends circumscribing public sector

Not all administrative bodies are at all times regulated by law and this pose a first tension within public space. Administrative organizations are instruments of government. Parliaments set policies for, and impose limits on governments and administrative bodies in the name of collective interests, and in order to protect individual interests. Judges for their part are called upon to ensure than administrative actors respect the objects and the limits imposed by the legislators. Administrative actors inevitably find ways of getting around the limits that have been set by the law upon their activities. There are parts that evade such regulation, particularly when action in exceptional circumstances is urgent and necessary. “There are regulatory gaps that are of necessity filled in by politics rather than law and there are certain administrative activities over which judges exercise more limited control. The rule of law is necessarily incomplete...”6 Nevertheless, although not representing absolute solutions, some directions have been followed to confront the dilemma of abuse of power such as: 7

7 Idem
• placing more emphasis on the rule of law or the principle of legality in a substantive sense than in a formal sense;
• certain essential principles of administration has been lay down in constitutions—they’ve been granted constitutional status in order to guarantee that they are respected;
• a third remedy has been to establish links between collective choices and administration through procedures of deliberative democracy;
• lastly, the scientific nature of administrative activity it has been underlined and thus entrusted to experts who follow the technical rules of each sector.

In the same time ex ante remedies have been sought through the establishment of rules of good administration, or the introduction of due process requirements in the course of administrative activities rather than imposing these on them subsequently. The right to participation, the duty to give reasoned decisions and the principle of transparency have also developed at the global level. It might be said that the basic core principles of good administration also constitute the core of global administrative law. However, the concept of good administration does not have a fixed content. These elements of good administration overlaps to a large degree with the principle of legality broadly understood in the administrative legal sphere. It forms part of the set of procedural rights, creating entitlements for those that are adversely affected. Also from the good governance perspective, it creates the premises for civil society and individual actors to participate at the realization of collective interests.

Secondly the public space is a fluctuating field of interests. It has expanded, then contracted, then expanded again under the pressure of nationalization and privatization. The reduction of the public sphere came through development of public-private partnerships, privatization, outsourcing and de-regulation (as a result of a process of liberalization that transformed sectors that were once reserved to the state into areas of unrestricted access. However, in our opinion these forms of reduction of the public sphere threaten the legitimacy of the democratic process of representing the collective interest posed by some difficulties: who should decide whether

8 Idem
to privatize, deregulate or outsource? or which private actors will benefit from these public decisions? and mostly important who and how will supervise (adding an extra layer increase the distance between the government and the activity in question, thus making it difficult to apply the core principles of administrative law)?

In this context, due to ‘the charade of democratic accountability given by the current electoral system’, a new institutionalized vision synthesizing private and public principles and standards is needed. It has been argued that public administration was never designed to maximize efficient service delivery, customer friendliness, and flexibility and that these criteria are an irrelevant yardstick. This is one of the aspects which the search for good administration must allow for.

Thirdly, although initially governmental in nature, administrative law has been universalized and lately have become applied even in the private institutions. Colonizing power of administrative law can be observed both in the administrative structures and in the rules regulating their activities in new space; the global arena has seen the rapid application of the rule of law through requirements of transparency participation, reasoned decision making and judicial review. Along this process we witness also another trend (obvious in the European Union) where administrative law is transplanted from one state into others: it captures other legal orders, but is in turn captured by them through processes of re-nationalization.

The interplay and the concurrence of the above mentioned factors give the public space a dynamic which has to be guided in

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9 Just looking back to the privatization of eastern Germany or to the chaotic atmosphere of nowadays Athens is not hard to draw such conclusions; see also Dionyssis (Dennis) Kefalakos, What is happening in the Eurozone, http://www.neurope.eu/articles/What-is-happening-in-the-Eurozone/106681.php, Ralph T. Niemeyer, Privatisations? Yes. No gifts! ‘DSK’ had opposed showing the torture tools to the Greek government http://www.neurope.eu/articles/Privatisations-Yes-No-gifts/106680.php
order to fit the economic, social, technologic or environmental concerns. Concepts like good governance and good administration are believed to be the compass in such a race but yet – regionally or globally- no stable unanimously accepted parameters were set to define their dimensions.

2.2 The concept of good governance

Good governance as a concept has been developed by various international organizations from economic necessity with a view to promote democracy, human development and sustainable economic growth in countries undergoing peace-building phase. The difficulty is that governance is already a vague concept, and the defining characteristics of "good" governance are equally vague. The latter is itself the object of an ongoing quest if there is a fixed and final model.

In recent years rule of law and public administration reform projects became grouped under the heading of governance. Some substantive or qualitative dimensions have been added to the definition of the rule of law, such as the core of human rights and protection of vulnerable groups. Governance has thus evolved into good governance. Yet, good governance is usually divided into ‘clusters’, where the promotion and protection of rule of law and human rights are separate from public administration reforms.

There are different criteria for good governance, of different nature or they serve different purposes and they do not necessarily concern the same parties. Some, such as respect for human rights, transparency and rule of law, are a way of establishing standards for the exercise of public power are not included in all definitions of good governance. Others, for example, those relating to efficiency and effectiveness, civil society and government, can be more descriptive, setting out issues that need further analysis. Human rights, rule of law and democracy are higher principles, structural and fundamental than the other criteria. These can be considered independent as ends in themselves, while the latter are only means to

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14 ‘Post-Washington Consensus’ definition of governance prescribes that there should be support for establishing or consolidating judicial autonomy and the rule of law

bring up other issues.\textsuperscript{16} The malleability of the definitions and the fact that they are exploited for political or economic ends that are not self-evident may explain why good governance has, on occasion, been violently criticized as being “the opposite of good government, its purpose being, it is argued, not the enhancement of the democratic participation of individuals and peoples in decision-making processes or respect for their right to development, but solely market deregulation.”\textsuperscript{17}

However according to the OECD, the parameters specific to good governance are accountability, transparency, efficiency and effectiveness, responsiveness, forward vision and the rule of law. The World Bank list of good governance indicators is: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, the rule of law and control of corruption.

The concept has become quickly assimilated and recognized also to the European level but was expanded from a political aspect till a legal concept immanent to the ‘rule of law’.\textsuperscript{18} In the work of the Commission the governance reform agenda draws on the rhetoric of democratization. The issue of governance was addressed for the first time in a systematic way with the publication of the White Paper in July 2001. In this document, the Commission attempted to address critics that questioned the EU’s ability to be closer to European citizens, to produce more effective and simplified legislation, to reinforce democracy in Europe, and to consolidate the legitimacy of its institutions. \textsuperscript{19} It also promotes and develops five principles of good governance: openness and transparency, participation and consultation when making initial legislative proposals and when implementing agreed-upon policy, accountability, effectiveness and coherence. Likewise, the White Paper reaffirms the relevance of the subsidiarity and proportionality principles in order to improve the quality of EU policies but “remarkable is the restrictive statement of European Commission”\textsuperscript{20} that the application

\textsuperscript{16} Tanquerel T., Good administration at the service of good governance: safeguarding individual rights and implementing democratic decisions, 2008, European Conference ‘In pursuit of good administration’
\textsuperscript{17} Idem
\textsuperscript{20} Idem
of the principles of good governance is a way of reinforcing the former two. The White Paper has made the Commission the focus of widespread criticism on several grounds: inappropriately visionary rhetoric, unrealistic assessment of the politico-legal situation of the Union, thinness of effective reform measures, lack of legal finesses\(^{21}\) and regarding the concept of good governance the critics were linked to the absence of a definition.\(^{22}\) Overall the Commission’s White Paper 2001 is a point of reference regarding the propagation of good governance as a legal concept underpinning the rule of law and democracy.

Nevertheless, outside of the legalistic debates, good governance is used as a leit-motive in accomplishing sustainable economic efficiency. This lead to a pressure to encompass new meanings which, in our opinion do not add much value but increase the vagueness and turn this umbrella concept into a slogan. In the next section we trace the legal extent that good governance acquired so far that can be translated in principles inherent to the rule of law thus establishing the connection with the concept of good administration

\subsection*{2.3 The legal dimension and parameters of good governance}

The evolution of good governance is strongly related to the concept of ‘rule of law’. Rule of law means that law must regulate the exercise of public power. This is synonym with the principle of supremacy of law that implies society ruled not by morality or political ideology, but by law.\(^{23}\) Legislation has to be applied by the public authorities and by the courts, the state interference in relation with the citizens must be based on general standards (the legality principle), and the most vital aspects of social life must be subject to regulation. In addition legality principle requires impartiality and responsibility from the judiciary and the executive, but also requires propor-


tionality that ensures a proper balance between objectives and measures with a view to keep the use of power within reasonable limits. These run closely with the principle of separation of powers, which requires a proper distribution of power among various influential actors. Among these principles is also the principle of equality which implies that the legal rules to be applied without discrimination and, in a more general sense, similar cases are equally treated.

Rule of law is a safeguard against arbitrariness and abuse of power, because interference with the citizen’s life must have a clear basis, accessible rules that are to be interpreted by independent courts. It asks also for legal certainty that means the citizens can foresee their legal position to the widest possible extent but also means that the rules do not leave too much space for discretion to the public authorities. Not every rule, however, can be exact because the exercise of public power must be flexible and because some areas are difficult to regulate in very concrete terms. Still, the more discretion the less legal certainty, and therefore rule of law also implies that discretion should be exercised according to certain legal principles such as principles of good administration, that we are going to discuss in the next chapter. To prevent the abuse of power and discrimination against certain groups in society, the administrative law of society in question must develop so that is clear which criteria are valid in the use of the discretionary powers.

Rule of law involves a series of conjointly applicable background principles and rules governing the mechanisms of the legal order and it demands a certain quality of regulations. In this sense the principle of good governance enforces and safeguards the supremacy of law and therefore it can be concluded that in the European legal order it is a legal concept that underpins ‘rule of law’ and further on consolidates democracy, and at the level of public administration is condensed under the form of good administration.

In one of its documents regarding public administration, OECD identified the administrative standards to which EU candidate countries were expected to conform in order not just to become members of the EU and part of the ‘European Administrative Space’ but also to promote good governance. The document suggests a summary of a ‘general consensus on key components of

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24 Idem
25 Idem
26 OECD SIGMA Papers: No. 2, European Principles for Public Administration, 1999
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Good governance emerging among democratic states’ that should apply to all member states regardless of legal tradition and system of governance. The suggested standards are inspired by the jurisprudence of the European Court of Justice and include the rule of law, principles of reliability, predictability, accountability and transparency, but also technical and managerial competence, as well as organizational capacity and citizens’ participation.

Also, European Ombudsman is one of the institutions that has conceived his role as one fostering the culture of good administration. He has tended to define good administration by contrasting it with maladministration either by reference to principle – “maladministration occurs when a public body fail to act in accordance with a rule of principle which is binding upon it”27 or by reference to non-exhaustive exemplary list of conduct which constitutes maladministration. Ombudsman’s Code contains in essence the classical basic substantive and procedural principles of administrative law (rights to the defence, grounds for decisions, non-discrimination, impartiality, possibility of appeal, etc.) as well as some rules of good administrative functioning (sending acknowledgement of receipt, transferring a file to the competent service, indication of the responsible official). But “both types of norms are, because of their legal status, part and parcel of the principles of good governance.”28 Further on the European Ombudsman in its reports and decisions, which are not of a legally binding character, had used the terms ‘principles of good administration’ or ‘good administrative behaviour’, enhancing and deepening the parameters of the principles of good governance in the European normative framework.

As a preliminary conclusion we notice that the concept of good governance is framed and based upon the principle of rule of law but is broader as significance and also touches upon extra-legal dimensions allowing human rights and economic market’s influence to come along. The criteria engaged are diverse but all converge around the same sets of principles: proper administration, participation, transparency, accountability and effectiveness.

Within the framework of public administration which is limited by its function- to execute and to implement regulations- good governance retains specific characteristics that make sense for and

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27 European Ombudsman, Annual Report 1997
can be applied to the peculiar relation between the individual and the public machinery. These characteristics are prescribed by their legal nature, are analogues to the specific features of human rights oriented public administration - lately grouped under the heading of good administration, and from this perspective they are perceived as aspects inherent to good governance.

3 Good administration between efficiency and legality

In this chapter we are trying to identify what is the meaning of good administration from two different, somehow antagonistic perspectives and where it can be properly situated: under the value of economic efficiency or of legality (more broad the rule of law)? As such these two values are both encompassed by the concept of good governance but not necessarily complementary and often one will attain priority in the disadvantage of the other. They shape the content of good administration and further on, as we will see in the next chapter, they require different forms of organization. The perspective that we depart from in this section is, again, that expressed in the Recommendation (2007) of the most vocal intergovernmental organization, who sets different trends for the development of administrative law, namely the Council of Europe. However, in our opinion, this view is not offering a clear understanding or direction for the purpose of identifying the specific dimensions of good administration. Thus, as a more logical and coherent comparative line, the second perspective will follow the ideal functional background of the public administration by making use of a sociological analytical tool, namely the distinction between functions-as-effects and functions-as-purposes of administrative actions and regulations.

3.1 The Council of Europe Recommendation CM/Rec(2007) of the Committee of Ministers to Member States on Good Administration

The Recommendation proceeds from the consideration that public authorities are active in numerous spheres and play a key role in a democratic society; that their activities affect private persons’ rights
and interests and that national legislation offers to people certain rights with regard to the administration. The Recommendation says that good administration "must meet the basic needs of society", but it does not define those needs. In our opinion the simplistic attempt to link good administration and not good governance to the needs that are to be considered necessary to fulfill by the public administration is a bit confusing. More exactly establishing which collective needs are to be considered basic for a society becomes problematic in terms of legitimacy. Thus it is necessary to acknowledge the existence of a subjective element in the evaluation of collective needs and in the choices which derive from their assessment. Perhaps because of this, they cannot be defined accurately especially when government is assessed against the settlement and satisfaction of needs that are perceived as important issues by vocal groups in society. Thus the decision is a political one and a matter for the political, not for the administrative authorities. At this point, the democratic requirement that the chosen solutions must give the public what it wants must follow the principles of good governance which is broader and much complex as significance then the principle of good administration.

However the Recommendation continues "that good administration... depends on the quality of organization and management; that it must meet the requirements of effectiveness, efficiency and relevance to the needs of society... that it must comply with budgetary requirements"; that it is "dependent on adequate human resources... and on the qualities and appropriate training of public officials". In this regard, we do agree that public authorities satisfy the requirement of good administration, not just by obeying the law, but also by undertaking certain work and providing certain services. Having defined needs by the democratically elected political bodies, further on public administration decides how to meet and accomplish them in the most efficient way and by taking care of each interest that is to be affected. Therefore we acknowledge that at a political level the principles of good governance may require adjustment of the solutions, but with a view to include the dimensions of transparency, participation, accountability and good administration in the same measures and assessments that track the efficiency and effectiveness.
In one of its general reports about the status of public administration, the UN General Assembly triggered the attention that it is evident that the law - which is based on rules and compliance, will come into conflict with the logic of management, which organizes collective action by a combination of means and goals.\footnote{UN General Assembly, "The Legal and Regulatory Framework of Public Administration", 1995 Report} But on the other side the same report underlines that the pursuit of economic efficiency in the administration is pointless and potentially dangerous without an appropriate policy/legal framework, and that law should be seen as the framework, object and tool in any standards setting for the public administration. The OECD joint initiative SIGMA\footnote{OECD SIGMA Papers No. 17, Administrative Procedures and the Supervision of the Administration in Hungary, Poland, Bulgaria, Estonia and Albania, 1997, p12} also gives equal status to 'effective administration' and 'the respect for the rights and interests of citizens' in its programmes to support transition. The concept 'effective administration' is understood to mean that each department, agency, local authority, or other public body exercises its powers in accordance with the purposes and standards defined by law in an economical and efficient manner.\footnote{Idem} The 'rights and interests of citizens' means that people who are affected by the actions and decisions of administrative institutions should be treated properly and fairly, i.e. benefit from the protection normally associated with the rule of law.\footnote{Idem}

The Recommendation’s operative part then urges member states to "promote good administration through the organization and functioning of public authorities ensuring efficiency, effectiveness and value for money". Recommended solutions include setting objectives and devising performance indicators, introducing assessment, seeking the best ways of securing the best results, and setting up monitoring systems. More generally, these solutions must be consistent with "the principles of the rule of law and democracy" which emphasis the role of good governance where citizens no longer count as the targets of action, but – directly or indirectly – as decision-makers.

Thus good administration, as the Recommendation again says, is not just concerned with legal arrangements. "It is concerned with data and solutions which far transcend the law. But it still cannot
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dispense with law which applies specifically to administration and is designed to secure good administration, ensuring that these developments do not take place at the expense of the rights and entitlements of individuals."

3.2 Good administration as an aspect of lawfulness

The rule of law is "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency." Thus any rule of law strategy should be evidence-based, realistic, anchored in universal concepts of law and human rights, and locally owned where conditions allow. Further, rule of law strategies should centre on the individual, and pay particular attention to the needs of weak and vulnerable individuals.

Much has been debated about adjusting administration to meet the needs of the community; this involves adjusting the law on administration to those needs, which are also the administration’s needs i.e. introducing special administrative laws (particularly of consumer and competition law). Administrative institutions are subjected to the law, and special rules are rendered necessary by the very prerogatives and tasks of public authorities: because they have unusually extensive powers and public-interest functions- suitable laws must be applied to them. In well established democracies, making administration subject to law was already a step forward, and has itself done much to make the rule of law a reality. We need

34 Delvolvé P., In pursuit of good administration, European Conference organised by the Council of Europe in Warsaw2008
37 Delvolvé P, In pursuit of good administration, European Conference organised by the Council of Europe in Warsaw2008
to remember this because it also helps good administration to become reality. Its basic principle is that of lawfulness, i.e. public authorities are required to comply with the law. It is a further step forward which needs to be taken, and even a change necessary to recognition of a right to good administration. The Code of Good Administration proposed by Recommendation CM (2007) affirms this as one of the first principles on which good administration depends. In this respect, good administration coincides with the rule of law.

In general, all sources of law are effective against public authorities of which some cover external, and others internal, lawfulness. The first are those which regulate the powers of the various administrative authorities and the procedures they must follow before taking decisions. In this area, the Code of Good Administration lays down rules on administrative measures, on the way they come about, on the hearing of those they affect, on the form they take, on notification of the public, and on their coming into force. All of these rules relate to the laws applying to public authorities and contribute to good administration, before becoming elements in a right to good administration.

The second group of rules covers the very basis of law and they refer to the fundamental rights and freedoms, which are no less important. The Code of Good Administration does not refer to them explicitly, but the Recommendation points out that the activities of public authorities "affect private persons’ rights and interests", that "national legislation and various international instruments… offer these persons certain rights… ; and that the European Court of Human Rights has applied the Convention for the Protection of Human Rights and Fundamental Freedoms to the protection of private persons in their relations with the administration". Other principles expressly stated in the Code of Good Administration the principle of equality (both positively and as prohibiting discrimination) proportionality, legal certainty, reasonable time, transparency are perhaps more approximate in scope than the earlier ones. But they may also, more than the earlier ones, be not simply elements in administrative law, but conditions of

38 Idem
39 Idem
Good administration. They are also among the principles which show that there is a right to good administration.

3.3 Good administration from its function perspective

Good administration is a polysemic and evolutionary concept: it means different (though not concurrent) things in different national systems and its content tends to evolve according to the necessary changing social and economic environments that EU courts and institutions see fit for accomplishing the community interest. The vast literature on the European Union’s legislation is operating simultaneously in two (often diverging) directions, namely towards economic liberalization through economic law and towards the promotion of a European social dimension through social law.40

UNDP sees the public administration not only as an instrument to ensure effective policy making, sound management of resources and the delivery of essential services, but also as an essential means to advance the international norms and principles that underpin the democratic governance paradigm in a given society. By situating the public administration within a rule of law framework, the ‘users’ of the system become rights-holders, able to legally claim services and hold state agents accountable.41

As pointed out by Weber, the very goal of legal systems is to somehow “stabilize” the element of uncertainty typical of non-legally regulated relations among actors.42 The legal system instead offers various actors a certainty (or at least a high degree of probability) that, due to the enforcement guaranteed by specialized enforcement agencies employing coercive measures, other actors will tend to react (or not) in certain predictable ways. Thus the primary goal of the law become identified with that regulative and/or constitutive function of social relations. Following this line it can be

noticed that traditional legal fields and legal disciplines are labeled according to the targeted area they aim to regulate. For most legal fields, the terms characterizing and distinguishing them identify the web of legal relations and/or legal status that the very law is to regulate. In short, as pointed out by many legal theoreticians, “is often the very legal field that somehow creates its object of regulation and, for legal disciplines, of investigation.” In the actual case, the legal field of public administration will get its specific and definitive features by molding itself around the standard of good administration - a principle constructed and existing as long as the law recognizes it.

As public space and its constitutive social relations are the targets of the function of administrative law in general, though with different purposes (repressive, regulative, legitimizing), the first step is to find out what specific function is assigned by the label “good administration” in administrative law. In particular, this first move consists of looking to an analytical distinction as to the meaning of "functions of law" as developed in the doctrine of the sociology of law where it is possible to distinguish two different ideal-types of functions. To roughly summarize it, a particular function of law can mean a particular feature of the law. A distinction has been drawn between:

- functions of law as the effects or actual consequences of the law on a community ("what specific norms - principle and right- of good administration do"), and
- functions of law as the purposes or goals the law is intended to have in a community ("what good administration is thought to do").

44 Idem
45 See in M. Zamboni, about Hans Kelsen and Gunther Teubner
46 in M. Zamboni see Kelsen, ‘Pure Theory of Law General Theory of Law and State’, pointing out how discursive practices characterizing each discipline in general produce their own objects of discussion
47 in M. Zamboni see MacCormick, Legal Reasoning and Legal Theory, Oxford: Clarendon Press 1978,246,talking of a “circular relation” as characterizing the legal discipline and its internal doctrinal and practical components,
48 Brian Z. Tamanaha, ‘Law as a Means to an End: Threat to the Rule of Law, Cambridge University Press, 2006, pp. 245-249
It can be observed that some of the texts that claim to define the content of good governance or that of good administration concentrate on the tangible, practical results of government action, while others focus on the procedures to be observed by the government. Further on, they provide definitions framed on the function these concepts are sought to accomplish. For instance, the function-effect of good administration rules at the level of EU can be uniform administrative legal system building (an European administrative law based on this standard), and an after-effect in the long run would consider coherent and uniform application of Community administrative measures/rules in order to provide efficient public services. Meanwhile function-purpose is, however, the promotion of citizens’ administrative rights when they are interacting with a public authority at any level (local, European).

"Function-as-effects" of law indicates the outputs of the law, namely the way a certain rule(s) has an effect on the administrative system as a whole, or on a part. In the Recommendation, good administration means efforts to achieve results defined through requirements of quality, effectiveness and efficiency, justified by the very quality of the results. This is a completely utilitarian approach, where the justification is the results obtained. Administration is "good" if it helps to enhance the health, security, quality of life and even happiness of the population. However, the main risk of such an approach is that technocratic public servants will decide what is good for their public without taking account of their choices and aspirations.

“Function-as-purposes” instead addresses the values (or model of behaviors) the law aims to introduce into a certain community. Continuing this line of analyze it might be contented that good administration have been designed based more on the function-as-purpose feature. The term “good” in administrative law is primarily indicative of the function-as-purposes behind the very construction of this law and the corresponding legal discipline. The primary focus of good administration law is not to “regulate” or “legitimize” something

49 T.Tanquerel, Good administration at the service of good governance: safeguarding individual rights and implementing democratic decisions, 2008
50 Idem
51 In M. Zamboni about Habermas, Between Facts and Norms, in ‘The “Social” in Social Law –An Analysis of a Concept in Disguise,’ Stockholm Institute for Scandinavian Law 2010
such as “administration” or “exercise of power in the public interest”. The primary and characterizing goal of principle of good administration is its function-as-purpose: the unifying element of all the legal pieces of a legal system that go under the legal principle of GA is not that they have an impact on or deal with one single phenomenon (e.g. exercise of public authority) - the unifying element is that they all pursue one single ideal picture how the individual should be protected.

Thus the determination or the definition of good administration as a concept in the light of its valences is a process that provides full scope for debate and democratic choices. Nevertheless, from the perspective of its functions, good administration cannot be assessed by the yardstick of predetermined efficient results (effects) as recommended by the Council of Europe. In our opinion public administration should evaluate its results by comparing them with objectively predetermined, general accepted standards that are set according to human rights, to substantive and formal principles of administrative law (proper administration) and to other aspects related to the good functioning of administrative service. 

4 The quest for the most appropriate form of organization

In the light of the previously mentioned dilemmas that public sector is encountering, it cannot be ignored that contemporary political-administrative settings face institutional imbalances and challenges. There are important source of change derived from shifting interrelations between institutions and tensions between their foundational norms. Different legal or socio-political scholars, in the words of Olsen, are concerned about various intrusions and attempts to achieve ideological hegemony and control over public institutional settings. It is believed that institutional imperialism may threaten to destroy what is distinct about other institutional spheres. However, the general opinion is that an institution under serious attack re-examines its pact with society, its rationale, identity, and founda-

52 de Leeuw M.E, The European Ombudsman’s role as a developer of norms of good administration, European Public Law 17, no. 2 (2011)
53 See section 2.1.
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tions,55 and public administration reforms can be said to consist of “deliberate changes to the structures and processes of public sector organizations with the objective of getting them... to run better.” 56

These aspects were already tackled during a paradigmatic shift from administering and governing through bureaucracies and hierarchies (the Weber’s model), to competitive markets and cooperation in partly autonomous policy networks (New Public Management models) has been diagnosed or prescribed.57 Nevertheless the power aspects and the ethical dilemmas inherent to such metamorphoses were rarely made explicit. The public space encountered administrative reforms aimed at improving practical problem solving it within fairly stable institutional and normative frameworks or reforms aimed at changing such frameworks. In this chapter we are more interested to deal with the latter aspect, because there –in the transformation of the normative framework- are at stake an institution’s external relations and its pact with society. Likewise, we believe, that for promoting good governance and good administration, there may be relevant quests about what different institutions are supposed to accomplish the needs of society, how each is to be justified and made accountable, and what kind of relationships government and administrative machinery are supposed to have to individuals and to other different types of institutions. While some argue that properties of administrators as well as structures, rules, and resources make a difference others perceive good administration solely as a question of proper organizational incentives. Thus in the following sections we try to underline shortly the main characteristics of each model of structural organization and to identify the main threats and opportunities posed for the concepts of good administration as well that of good governance

4.1 Structures and processes: NPM vs Weber

It has been contended that the ‘traditional’ way of governing society is ill-suited to cope with the tasks and circumstances faced. The special nature and success criteria of the public administration have been denied, and dichotomies such as state–society, public–private or politics–administration have become obscure. Public administration reforms should be consequently understood as the search for administrative (public service) structures and processes that are more responsive to the needs of citizens and otherwise deliver better public goods and services.\textsuperscript{58}

Reforms based on neoclassical economic ideology and private management ideology has prescribed privatization, deregulation, market competition, and commercialization. "Public administration is a supermarket delivering a wide variety of public services, disciplined by market competition."\textsuperscript{59} Management by contract and result replaces management by command. "Citizens are a collection of customers with a commercial rather than a political relationship to government", and legitimacy is based on substantive performance and cost efficiency and not on compliance with formal rules and procedures.\textsuperscript{60} This has led some authors, for example Olsen, to trigger attention ‘that transformation from one institutional archetype to another requires deinstitutionalization and a subsequent re-institutionalization. The legitimacy of an institution’s mission, organization, functioning, moral foundation, ways of thought and resources is thrown into doubt, and a possible outcome is the fall and rise of institutional structures and their associated systems of normative and causal beliefs.\textsuperscript{61}

New Public Management promoters (market and network supporters) have claimed that the era of hierarchical and rule bound administration is over. Usually, the language is apolitical and ‘administrative development is fate more than choice’.\textsuperscript{62} There seems to be also an inevitable shift toward a more advanced administration and a convergence in administrative forms, globally or at least

\textsuperscript{58} P. Bergling & co, ‘Rule of Law in Public Administration: Problems and Ways Ahead in Peace Building and Development’, Folke Bernadotte Academy 2008
\textsuperscript{59} Olsen J.P., Maybe its time to rediscover bureaucracy, Journal of Public Administration Research & Theory, 1/1/2006, Vol. 16 Issue 1
\textsuperscript{60} Idem
\textsuperscript{62} Idem
among EU Member States. But convergence hypothesis is not supported by empirical observations. While globalization is exerting pressures on administrative systems around the world, they have not created convergence and a common pattern. Neither have the internal market, common legislation, and intense interaction among administrators in the European Union produced structural convergence. Member States continue to organize their administrations differently both at home and in Brussels.

Market enthusiasts are also inspired by neoclassical economic theory. In this view, public administration has to adapt to a globalized economy and a paradigmatic shift to markets and management has been presented as a generic medicine. The market that emerges from the new technological revolution declares that it is more efficient in managing resources by itself and that these efficiencies will end in a more prosperous society. One of the political consequences of this market approach is the claim of a reduction of taxes for the companies and for the citizens, in the first case in order to assure more productivity to capital investments and to ensure new investments, and in the second case, to assure that the citizens have money to pay for the new set of products and services coming from the new technologies. As a result, new technologies allow economic globalization that, at the same time places market rules above any political rule. On the other hand, this competition with the Market, for mastering the economic resources, will have a remarkable incidence on the maintenance of the levels of protection of the Welfare State- that will be compelled to limit public spending and to prove that the resources taken from the economic system are managed in an efficient and effective way. In this effort, to achieve a proper and orderly resources management by public authorities, the debate coming from the management theo-

67 L. Ortega, ‘Main changes in administrative law in the last decades’, European review of public law, vol. 22_1/2010,
68 Idem
69 Idem
ries is still open regarding the excess of regulation on the administrative level, this being the main reason for the contended ineffective, irrational and slow activity of public administration.70

In this sense, NPM theories have made an acute critique on the Max Webber administrative model, but it is also obvious that they don’t give any operative solution for a renewal of the rule of law on which this model is based. The clearest example comes from the fact that the evolution of administrative management that this theory proposes only takes into account the economic and social results. This perspective does not allow the elaboration of an operative system of guaranties in favour of the involved citizens as regards legal certainty, because there will not be (the judge will not have) any other criteria for assessing the real outcome.71 On the other hand we must realize that it is impossible to contend that each single administrative action is fully described in a legal norm. This is why it has not been a fertile idea to conceive administrative law only as an instrument of control of the legality of administrative action. From this perspective, efficiency and effectiveness as rules of administrative action become a rationality rules. They might be used in order to go ahead with reinforcement of citizens’ guaranties that every administrative measure/act is based on the gain of individual benefits or is promoting the social collective results that are needed. Thus, we believe that the most appropriate administrative procedure is the one conceived as a complex formula that balances interests and firstly guarantees the protection of the individual or respect for human rights and subsequently chooses the most rational and reasonable solution.

Meanwhile network enthusiasts, emphasizing horizontal links and power sharing between government and society, call attention to attempts to change existing power balances through political processes72 and elements of environmental “necessities”. Network organization is, for example, interpreted as a “logical consequence of the functional differentiation of modernity, a reflection of changing

70 Idem
71 Ortega L., ‘Main changes in administrative law in the last decades’, European review of public law, vol. 22_1/2010, Esperia Publications
power relations in society, and the reconquest of political authority by societal actors.\footnote{Olsen J.P., Towards a European administrative space?, Journal of European Public Policy, 2003, vol 10, no4}

The network criticism of bureaucracy has appealed to democratic ideology and has explicitly raised issues of authority and power. It has prescribed \textit{cooperation and consensus seeking and more flexible types of organization, inter-organizational power-sharing networks, and it has emphasized participation in administrative decision making, implementation, and enforcement.}\footnote{Olsen J.P., Maybe it's time to rediscover bureaucracy, Journal of Public Administration Research & Theory, 1/1/2006, Vol. 16 Issue 1} Public administration is to be disciplined, but also enabled, by citizens’ empowerment and social partnerships, where public and private actors are interdependent and need to cooperate and build trust. Is presumed they pool legal authority, financial resources, expertise, and organization in order to improve results. The increasing number and importance of multihal networks bring about a loss of central authority and political steering, and elected officials and administrative leaders have limited capacity to deliberately design and reform public administration. Biggest challenge might appear in communities where people do not have the resources and expertise needed to maintain a constant cooperation and participation in the decision making process. This vulnerability can be speculated by economic organizations (industrial, corporate) that may take over decision making to the detriment of the collective interest.

In contrast to the assertion that bureaucratic organization is undesirable and should be replaced by competitive markets or power-sharing networks, the Weberian model emphasized the technical superiority and the procedural rationality of bureaucracy. In \textit{Economy and Society}, Weber identified bureaucratic government – “general rules, hierarchy, full-time training, and so on” – as a central feature of the process of societal rationalization:

> “From a purely technical point of view, a bureaucracy is capable of attaining the highest degree of efficiency, and is in this sense formally the most rational known means of exercising authority over human beings. It is superior to any other form in precision, in stability, in the stringency of its discipline, and in its reliability. It thus makes possible a particularly high degree of calculability of results for the heads of the organization and for those acting in relation to it. It is finally su-
perior both in intensive efficiency and in the scope of its operations and is formally capable of application to all kinds of administrative tasks.”

So we retain the idea that bureaucratization grew out of the rationalization process with a view to promote efficiency. It also constituted the only realistic way of administering the complex societal forms that accompany it, an application of the same principles of rationality and technological progress that produced industrialization. The political struggle that Weber analyzed in modern society was subject to two competing dynamics: bureaucratization, on the one hand, and democratization, on the other. These forces led to a progressive consolidation of a “societal” form of organization, where membership is determined only according to objective criteria. As a consequence, the law-making of a democratically elected national assembly or in general, all the political or legal actors legitimized directly or indirectly by a popular election, came to represent the highest form of expression of the “true” and only community, namely the one of citizens.

These concepts in Weber’s account, written in the early twentieth century, of logically formal rationality and the rise of capitalism will seem eminently familiar to legal scholars today: they have become touchstones in the field of law and economics. Freedom from interference in legal outcomes by “irrational” sources, whether they be such status-based pressure (what some might describe as a variant of “corruption”), or equitable considerations, has been argued to be central to the ability of public and private actors to operate efficiently. Predictability and legal certainty, are flowing in part from this freedom from interference but also from the commitment to formal rationality, that are crucial to efficient market activity and to good governance as well.

76 Idem
Thus in the context of promoting effective governance, public administration can be portrayed in a favorable and optimistic fashion only when "(in a well-functioning democracy) the role of bureaucracy, as a legitimate form of governance, is combining the values of supporting a due process, balancing competing political interests, protecting the rights of minorities and of individuals as citizens", public values which are animated by moving towards good administration.

4.2 Ethos of rule following

Weber suggested that, in historical perspective, the dynamic of the relationships between institutions can be understood in terms of "a tension between bureaucratic routinization and charismatic political leadership. In different time periods the economy, politics, organized religion, science, and so on can all lead or be lead, and one cannot be completely reduced to another." The political-administrative systems then can be organized into partly supplementary and partly competing administrative forms and mechanisms of governing—including hierarchies, voting systems, price systems and competitive markets, and cooperative networks. However, assessments of public administration need to make explicit the normative criteria used and not reduce administrative (re)organization solely to a technical question involving the efficient implementation of predetermined goals.

The idealistic visions of market, network and bureaucratic organization propagate an image that assumes that a single, context-free set of principles for organizing public administration is functionally and normatively superior. Meier and O'Toole make the case that good governance perspective is a particularly promising way to conceive of the role of bureaucracy in democratic policy-making. This perspective begins with the observation that, in the 21st century, public programs are ordinarily designed and implemented by arrays of governmental and societal actors, from elected officials and bureaucrats to organized interests and nonprofit or-

80 Meier and O'Toole, ‘Bureaucracy in a Democratic State’ in Steven J. Balla, doi:10.1093/jopart/mun003 Published by Oxford University Press on behalf of the Journal of Public Administration Research and Theory, 2008
organizations. As a result of this institutional diversity, the task of representing the democratic public falls not only to politicians but also to bureaucrats.\textsuperscript{82} Similarly, democratic decisions are made not only inside government offices but also within private sector organizations by following procedures similar to those laid down with respect for the principle of good administration. The governance perspective would put forward the possibility of a bureaucracy which operates outside of the confines of political control and advances the achievement of democratic values.\textsuperscript{83}

The European Union may be considered the illustrative (not necessarily the perfect) model for market and network based structures that do include the bureaucratic organization. To a large extent, the European edifice is based on rules and legal integration, and strengthening markets and networks have produced more rules then initially expected. Likewise, increasing diversity might be conducive to the quest for new rules. Arguably, we witnessed a rule explosion, an upheaval of rights and a global expansion of judicial power. In the same line, the need for more public accountability has created an audit explosion, new mechanisms and regulations.\textsuperscript{84} However, while it is relatively easy to monitor whether rules and procedures are followed, it is more difficult to attribute causal effects to specific organizational properties or actors, in particular in multilevel and multicentered systems.

A complication is that the functionally best solution is not always politically or culturally feasible and vice versa. A disentanglement problem appears when “good administration” is defined by several competing criteria and performance depends upon the organization of public administration as well as the qualities, orientations, and capabilities of the personnel. Hierarchical authority, market competition, and cooperative networks provide different mechanisms of accountability. All three depend on rules, yet on different kinds of rules and in different ways. The scope of rules may be mixed. Rules may have positive effects up to a point and then, as there are more of them, negative ones. Detailed rules and rigid rule following might under some conditions make policy making, implementation, and enforcement more effective, but a well-working system may also need rules that allow discretion and flexi-

\textsuperscript{82} Meier and O’Toole, ‘Bureaucracy in a Democratic State’
\textsuperscript{83} Idem
\textsuperscript{84} Olsen J.P., Maybe its time to rediscover bureaucracy, Journal of Public Administration Research & Theory, 1/1/2006, Vol. 16 Issue 1
bility. Consequently, the short-term and long-term consequences of rules may differ, for example, standard operating procedures may increase short-term efficiency and at the same time reduce long-term adaptability; they might make public debate obligatory, but rule following may also hamper reason giving and discourse. Therefore whenever public institutions are confronted with power exercise’s dilemma it is important they may guide their action based on normative/substantive content of the principles of good governance and of good administration.

The problem is extended because administrative success also depends on the performance of various institutions and actors organized on different principles and different cultures, resources, history, and dynamics. It summarizes the extent to which public officials and citizens are able and willing to commit resources to match government tasks and objectives and to give autonomy to apply the expertise that each has. The effects of rules also depend on whether rules are internalized or represent external incentives and constraints. Weber also underlined how important it is that administrators are socialized into an ethos of rule following. That is, that they are governed by internalized codes of exemplary behaviour, right and wrong, true and false, legal and illegal, organized into the bureaucracy as an institution.

Hence, the effects of rules are linked to how well bureaucracies solve the “perennial problem of preserving character and judgment,” that is, the ability to maintain ethical reflection, give good reasons, distinguish between legitimate and illegitimate demands, and “ensure responsible action even when no one is watching”.

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85 Idem
86 Idem
87 J.P., Maybe its time to rediscover bureaucracy, Journal of Public Administration Research & Theory, 1/1/2006, Vol. 16 Issue 1
88 Idem
5 Good Governance principles embedded in the assessment tools of public administration performance

Within the framework of good governance and in the light of the above discussed institutional re-organization, the dimension of the economic efficiency and effectiveness of public administration is problematic and draws attention to the applicability of the principle of accountability. In order to link together different interests groups and perspectives and to obtain a panoramic view about the degree of alignment between how the administration is perceived to function and is expected to function, assessment tools can be applied over the activity of public administration. The assessment tools can be designed and employed by various social and political forces or interested stakeholders concerned with aspects of human rights, rule of law, access to justice or legal empowerment terms usually inherent to the concepts of good administration or good governance. Nevertheless the importance of these instruments is related to the dimensions of quality and quantity that public administration is thought to accomplished. Thus, we believe that the concept of good administration is promoted by using assessment tools that are measuring ‘how’ citizens are satisfied, while deploying assessments oriented towards ‘what’ should be delivered is a matter of good governance.

5.1 Accountability and efficiency parameters in the use of public resources

Public administration institutions deal with every-day issues and as such, they are the principal interfaces between the state and the individuals. The ‘quality’ of their services is critical for the protection of basic rights and liberties. By situating the public administration within a rule of law framework, the ‘users’ of the system become rights-holders, able to legally claim services of a certain quality.89

From a regional perspective, the rule of law was (and still is) a prerequisite for membership of the EU and a founding principle

for the Union itself. When assessing the rule of law in candidate states, the EU was primarily concerned with four aspects of the concept: supremacy of law, separation of powers, judicial independence, and fundamental rights. In the area of administrative law, it is, paradoxically, efficiency which is held to guarantee independence (together with certain formal elements, such as the establishment of proper civil services and codes to guide their activities in general)\(^90\).

The Council of Europe’s Recommendation in the preamble sets great store by the effectiveness and efficiency of the authorities and the quality of their work. As has already been said, the facet of good administration is elaborated on these aspects. It recommends procedures for monitoring the actions of the authorities by means of a system of objectives and performance indicators. It also calls on member states to pay regular attention to the cost and usefulness of the services provided and, to this end, to "seek the best means to obtain the best results".

Anyhow, the paradigm shift towards more “open government” as an essential component of a good governance infrastructure has widened the debate on public administration reforms to also include the fostering of dynamic partnerships with civil society and the private sector, and ensuring broader participation of citizens in decision-making and public service performance monitoring. It means that apart from a critical focus on delivering services, special attention is also needed to transform the public service into a representative and accountable institution\(^91\).

However, existing tools for assessment focus on internal processes, with the effect of minimizing the interface between government and civil society actors. In many bureaucracies around the world, accountability is essentially internal, through a hierarchy of supervisors and horizontal control structures, with little concern for accountability to the public or to elected representatives\(^92\). As remedy, public hearings and public grievance mechanisms that allow citizens to report abuses of authority can promote democratic

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\(^{90}\) P. Bergling & co, ‘Rule of Law in Public Administration: Problems and Ways Ahead in Peace Building and Development’, Folke Bernadotte Academy 2008

\(^{91}\) UNDP, A Users’ Guide to Measuring Public Administration Performance, United Nations Development Programme, Oslo Governance Centre, 2009

\(^{92}\) Idem
oversight at the local level. That’s why it should be developed a customised set of indicators. Clearly, the normative framework selected will influence the choice of interventions, the priorities within them and how they should be implemented in particular country contexts. Consequently it will also affect the particular themes and indicators which are considered relevant in any assessment exercise. Monitoring and evaluation should be comprehensive. For the public administrative sphere, this would cover a whole range of factors involved in establishing and maintaining administrative institutions functioning under the rule of law (for example budgetary allocations, oversight and accountability mechanisms, appointment processes, human resources policies, and training). The development of rule of law indicators for the public administration may therefore be an indirect way of promoting good administration’s principles.

5.2 Measuring performance by promoting good administration or good governance?

Measuring public administration’s performance, through a set of indicators that are relevant in terms of their contribution to efficiency, quality and effectiveness of public administration can be imposed when the examination takes place at an aggregate level (or sectorial level institution/agency) in the context of good governance.

There are a number of relevant existing tools and information sources which can be used to measure different components of public administration performance. They can be further categorized as follows:

- Purpose-built tools which purport to measure a particular aspect of public administration – economic performance or compliance with specific standards of good administration

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93 We are going to further elaborate this topic in the second part of our research
94 For instance, the Country Governance Assessment framework, developed by the Asian Development Bank, provides guidance questions for the evaluation of revenue administration and public expenditure management. While many of these questions are purely technical, some are informed by democratic governance principles, such as responsiveness and transparency: e.g. Do budget priorities reflect underlying needs and demands of civil society? Is the budget published and made available to the public? etc.
- Broader governance assessment tools and information sources which include a component on public administration
- Tools designed for a different purpose, but which measure the relevant processes that are supporting rule of law through adherence to good governance’s principles

Returning to the importance of strategies with a view to promote the rule of law, so that good governance may become a reality, the effectiveness of these strategies should be based on knowledge and reliable data. Thus, developing tools for assessing and monitoring the "quality" of government size (such as checklists, indexes and indicators) should be a priority. Empirical evidence demonstrated that while indicators for monitoring various aspects of governance exist, they often focus on the ‘quantitative’ aspects of administration. This suggests that more attention should be paid to developing tools and indicators for measuring how ‘good’ (predictable, fair, objective, etc.) administrative decisions are. Such indicators should preferably be elaborated in a participatory manner (involving all relevant stakeholders, international and local) and cover all dimensions of public administration (structural, institutional and capacity). ‘User’ or ‘consumer’ perspectives need to be given special attention when the rights and duties of individuals are affected, for example policy design, service delivery outcomes, transparency, accountability, (gender) equity and human rights protection. At the same time each indicator must be specific enough to suggest an appropriate institutional solution. Such instruments would also help to build pressure for accountability.

Another important aspect is that monitoring and assessment should examine whether parallel informal or traditional structures exist, how they function and interact with the formal system, and to what extent they comply with rule of law and human rights

96 Idem
standards.\textsuperscript{99} Further, in line with the human rights approach to legal system monitoring, both domestic law and domestic practice need to be analyzed for compliance with international standards. Where it is determined that the domestic law meets international standards, the focus should be shifted to whether actual practice conforms to the domestic law. Although comprehensive monitoring is to be preferred, it is rarely possible to monitor all aspects of administrative practice.

There is a distinction between practices “de jure” (in law) and those “de facto” (in use). According to the same empirical evidences used by UNDP most tools attempt to measure practices “in use”. However when an assessment enquires whether a written procedure exists, it should also ask the extent to which it is actually applied. Because organizational processes will reflect the constraints imposed by the centralized rules and regulations, application of a tool across a number of public institutions might reveal evidence of systemic public administration problems.\textsuperscript{100} Where the information is required for diagnostic or dialogue purposes, the indicators must assess the processes in-use as well as those defined in-law or regulations. This kind of assessments focuses on the processes and results of an organization, rather than the public administration environment of which is part.\textsuperscript{101} Whether process indicators or result indicators are most useful will depend upon the objectives of the user. For instance when measuring service delivery (results) some surveys tend to focus on concrete dimensions – such as quality, timeliness, access and efficiency – which can be tailored to the public sector or organization that is at matter. Other focus on improving processes and capacity that are likely to deliver value to the customer.\textsuperscript{102} It therefore looks at the determinants of customer satisfaction. In short some tools emphasize how services are provided, rather than what is actually delivered to the customer.


\textsuperscript{100} UNDP, A Users’ Guide to Measuring Public Administration Performance, United Nations Development Programme, Oslo Governance Centre, 2009

\textsuperscript{101} Some other surveys tend to focus on concrete dimensions of service delivery – such as quality, timeliness, access and efficiency – which can be tailored to the sector or organization

\textsuperscript{102} UK Civil Service Self-Assessment Tool for Customer Service Excellence includes a question about the processes in place to identify the needs of “hard to reach” groups.
In our opinion none of these tools are necessarily superior to any other but at one point it might look more convenient to acknowledge the promotion of good administration by measuring the service delivery in relation to the way of ‘how’ the citizen is satisfied. Good governance would be suitable to promote by using indicators with regard to ‘what’ should be delivered. Governance assessments are concerned with the extent to which particular principles and values (e.g. transparency, accountability, participation, integrity) are put into practice through the system of public administration. They are therefore inherently normative in their orientation. If principles of good governance are not explicit, then it may be that they are reflected in specific indicators.\textsuperscript{103} In contrast, public administration performance assessment tools tend to focus on practices rather than principles.\textsuperscript{104} In addition, they are typically neutral with respect to the policy objectives (e.g. poverty reduction, gender equality) although these objectives are expected to be completed by that public administration which operates at specific optimal parameters of good administration, as an aspect of good governance.

6 Conclusion
In this paper we are trying to rumble what is behind the whole concept of the good administration—the latest desiderata of any public administrative system. Is this concept so broad that can entitle citizens to a fictional collective right to efficient public service as the directions set by the Council of Europe’s Recommendations 2007(7) are suggesting? From this perspective good administration is an aspect of good governance but its purpose is to deliver economic efficiency through profit oriented public services able to satisfy the needs of users in a competitive global market. Thus we might witnessed the promotion of a ‘consumer model of good administration’ where citizens are becoming clients (users), where sooner or later the traditional public services are privatised and the rules of good administration are found to be analogous with the rules for the protection of the individual consumer. On the other

\textsuperscript{103} EX: Country Governance Assessment: Participation of the public in the policy-making and legislative process; Are criteria for selection of public servants transparent? Do budget priorities reflect underlying needs and demands of civil society? Is the budget published and made available to the public?

\textsuperscript{104} UNDP, A Users’ Guide to Measuring Public Administration Performance, United Nations Development Programme, Oslo Governance Centre, 2009
hand this trend is proven to be problematic in terms of legitimacy concerning the means for administrating and governing collective interests.

In the absence of agreed-upon, clear, and stable goals and with uncertain ends–means relations, administrative organization becomes a problematic policy instrument and deontological concerns are likely to become more important. Reform programs have been part of a re-examination of democratic-constitutive ideals. They have involved attempts to modify inter-institutional relations and rebalance the role of the state, market, and civil society, organized interests, and citizens. The ‘good governance’ wave was in first place a reaction to all those attempts, presenting a partly alternative vision of the role of government and a third way between bureaucracy and market. Good governance is about ensuring the rule of law and democracy by respecting and implementing the principles of transparency, participation (or open government), accountability and responsibility, efficiency and effectiveness, and not least of good administration. Within this transparent and participative framework, bureaucratic, market, and network organizations are usually portrayed as alternatives, based respectively on hierarchical authority, competition, and cooperation.\textsuperscript{105}

From an analytical point of view, these are different mechanisms for achieving rationality and accountability, for mobilizing resources and organizing feedback from interested stakeholders. An administration that simultaneously has to cope with contradictory demands and standards, and legitimate organizational diversity is likely to suffer of more complexity,\textsuperscript{106} that might be structured within and circumscribed by the principle of good governance. According to this umbrella concept, the goal of public administration developments or reforms needs to be broadened to encompass efficiency and effectiveness, but also qualitative rule of law concepts and dimensions such as good administration standards. In the pluralistic societies (that require and promote a variety of criteria of success and different causal understandings) public administration cannot be organized solely on the basis of one principle alone namely that of good administration, but still its premises as well as its final purpose is to deliver and safeguard the right to good administration.


\textsuperscript{106} Idem
A legal and institutional framework based on good administration rules enables citizens to have a voice in governance and provides a channel for exerting accountability. They may develop not only institutions that make it possible to participate in administrative processes but also institutions that make it unnecessary to participate because they treat citizens as political equals and work with integrity in predictable ways. Therefore the right to good administration clearly relates to the relationship between the authorities and the public and not to the performance of the authorities. The later aspect is peculiar within the concept of good governance based primarily on effectiveness.

Good administration shouldn’t be resumed to a minimalist concept more as we witness an inevitable and irreversible paradigmatic shift toward market or network organization. This quest of reorganization might be wrong or insufficient but on the other hand bureaucracy is challenged for not being anymore the most suitable way to organize public administration, to accomplish all kinds of tasks under all circumstances. However after some enthusiasm for NPM principles, the relevance of administrative context has been rediscovered also in former communist states in Europe. Now, it is concluded that each country has to recognize its own potential and find its own way and not copy business methods and the NPM reforms from the West. Part of the advice is to go “back to basics,” that is, Weberian bureaucracies. Furthermore, the possibility of maintaining a modernized neo-Weberian state in Europe has been suggested, as a continental European and a Scandinavian alternative to the largely Anglo-Saxon New Public Management. Bureaucratic organization is part of a repertoire of overlapping, supplementary, and competing forms coexisting in contemporary democracies, and so are market organization and network organization.

Bureaucratic rules, furthermore, contribute to democratic equality because they are (relatively) blind to the wealth and other resources of the citizens they serve. In comparison, market ‘efficiency’ is efficiency in arranging trades that are mutually acceptable,

107 Olsen J.P., What is a legitimate role for Euro-citizens?, Comparative European Politics 2003, vol1 no1, pp91-101
108 Idem
given initial resources; and the democratic quality of networks depends on their accessibility for groups with different values, interests, resources, and capabilities.\footnote{Idem} It has been contended that a desirable formula would also allow the market to be controlled by the market itself. The state will only define the rules for making such market control possible and sufficient, without any public intervention in a particular economic area (without having the proper knowledge to be able to estimate the limits that should be imposed on a specific activity, the procedures through which it should carry out, the accountability and the liability that should be defined and the consequences of a irregular action).\footnote{Ortega L., 'Main changes in administrative law in the last decades', European review of public law, vol. 22_1/2010, Esperia Publications} On the other hand, the risks of a type of self-regulation, in which the only interest of the companies involved may count, at the end may have very dangerous consequences for society. That is the reason for which lot of credit is given to classical recognition of the administration described by Max Webber, based on the technical capacity of the public authorities to regulate, to control and to eventually fine private activities. Without these technical capacities in public hands, the general interest is unprotected. Hence, in the words of Olsen, \textit{Bureaucracy has been assumed to survive because it is essential to good administration and because representative democracy requires the use of hierarchy and needs the bureaucratic ethos.}

In this light bureaucracy, then, is assessed instrumentally, based on the expected contribution to realize predetermined goals, and deontologically, based on the validity of the behavioral codes and the principles of reason, morals, organization, and governing on which bureaucracy as an institution is founded.\footnote{OlsenJ.P., Institutional design in democratic contexts. Journal of Political Philosophy, 1997, no5, pp 203, 231.} The juridification of many spheres of society, human rights developments, increased diversity, lack of common overriding goals, and renewed demands for public accountability may furthermore contribute to a rising interest in the legal bureaucratic aspects of administration and governing. \textit{This perspective has led some authors, for example Olsen, to conclude that “bureaucracy has the role of a institutional custodian of democratic-constitutive principles and procedural rationality inherent to the rule of law”},

\footnote{Idem}
which in our opinion enforces the principle of the good administration and procedural guarantees for the citizens.

The rationale for intensified efforts to incorporate and promote rule of law dimensions in public administration are thus straightforward: 114

- “the public administration is the main interface between the state and its citizens;
- there is a strong relationship between the quality of the public administration and the protection of individual rights;
- improved protection of the rule of law is reflected in increased legitimacy for the state and makes it a more effective promoter of good administration.”

This approach refers to the promotion of a national framework of substantive and procedural rules that ensures the presence of rule of law guarantees throughout the enforcement of good administration standards, particularly vis-à-vis the individual. This framework may consist of constitutional provisions binding on the authorities and organization of the administration, administrative laws, administrative procedure laws, and supporting legislation. This framework needs to be as operative as can be in the domestic sphere and in this sense it also should enshrine a range of political or otherwise value-based concepts which are inherent to the principle of good governance. A common, coherent and supplementary normative European framework enshrining generally accepted principles of good administration and of good governance can constitute an effective ‘yardstick’ against which the quality of procedures and services it can be measured, thus helping individuals to demand high quality services and hold the administration accountable.

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