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Working session II: New models of organization and functioning in the PA

Calliope Spanou

National & Kapodistrian University of Athens

The search for organisational flexibility and efficiency is a longstanding practice in public administration. The use of private law entities to undertake non-core state activities is well-established since a long time. This practice is driven by the extension of state functions and the recognition of certain challenges regarding administrative operation for their fulfilment. More specifically, public entities are subject to time-consuming and rigid procedures prescribed by public law rules of operation. The broadening of the options for appropriate organisational forms to accommodate the diverse nature of state activities came as a response to such challenges.

It is also important to note that certain practices, rediscovered today, were part of the tradition of some administrative systems. The executive agencies were known in Sweden before the managerial reforms of the 1980s and 1990s. The distinction between the core civil service of the 'Beamte' and the 'Angestellte' in Germany is another example.

The modern context, however, is different in a certain way.

Our conference today is set to examine a phenomenon observed in various modern administrations, where established principles, procedures, and even reflexes appear to give way to novel practices. These practices challenge the more or less clear boundaries between public and private, as we currently know them.

The short story is that historically the point of departure was a high degree of differentiation between public and private. The integration of private-origin financing, recruitment, or even the close cooperation of public services with private actors was often considered unsuitable or even detrimental to the core concepts of public interest, public service, administrative impartiality, credibility, and citizen trust.

To the contrary, we observe more and more phenomena of de-differentiation: working methods, staffing practices, funding, and service provision increasingly blur the distinction between public and private. The questionnaire presented earlier provides numerous examples.

Hence the main question of the conference: how could the public institutional architecture accommodate such new practices?

In the following I will address two questions.

Firstly, to what extent do these novel practices correspond to, or define a new administrative paradigm?

My answer is negative.

Secondly, if this is not a new paradigm, what is the rationale for these new practices?

I. Is it a new administrative paradigm?

The first question is the origins of these practices: where do they come from? Do they form a coherent model or respond in an ad hoc way to contemporary challenges?

About four decades ago the New Public Management was presented as the new paradigm. It mainly proposed a de-differentiation between public and private operation and management.

In the late 1970s the state bureaucracy was contested for several reasons. A convergence of economic, ideological and political factors explains this shift. The challenging economic conditions resulting from the oil crises, recession and stagflation led to a re-evaluation of the role of government in the economy and beyond. Its activities should be limited and not burden private business. Deregulation, privatisation and competition were the main directions for reform. They indicated the withdrawal of the state from a series of activities, allowing the market and civil society to take over.

The state bureaucracy was also scrutinised through the lens of the market. Its rigidity was emphasised; bureaucratic operations were perceived as inefficient, slow, wasteful and not-service- or result-oriented. The point of reference was the organisation, management and evaluation of private companies, particularly in terms of cost-benefit analysis. The comparison focused on the weight of public law rules and procedures that were responsible for slowness and inefficiencies. This rule-oriented administration prioritised legality, accountability and control but failed to ensure effectiveness.

In a symmetrical manner, the private sector became the benchmark for higher efficiency and flexibility. Public administration should emulate this model to become businesslike, that is, to be managed and evaluated in a business-like manner. This implied a transformation of rule-oriented administrative behaviour and culture to a result-oriented approach. Consequently, administrative operations should be defined by the three Es: economy, efficiency and effectiveness.

Such arguments were part of a broader ideological and political shift that re-discovered and revitalised existing ideas within the new economic context.

A series of organisational reforms sought to emulate the private business managerial models and market conditions to enhance efficiency effectiveness and ensure economies in public administration and the public sector. This required separating core public powers and decision responsibilities of strategic importance, from the execution of tasks by entrusting it to arm's length agencies for better policy implementation.

This separation would contribute to higher specialisation and better concentration on these functions and improved control of resource use and output. Large bureaucratic structures should not only be re-organised along these lines, but sometimes quasi-market conditions should be created, with competition among units performing similar roles to drive better results.

Beyond the more visible policies of market liberalisation, privatisation and the general redrawing of public-private boundaries, more subtle changes took place. These included the recruitment of managers from the private sector to lead public organisations from public corporations to hospitals, even prisons. These private individuals were expected to transfer the knowledge and experience of private organisations, including their working methods, monitoring and evaluation systems, human resources selection processes and management techniques. Such practices reflected the belief that the public sector should learn from the private sector and that the introduction of private managers would enhance the operation and efficiency of administration.

However,

The claim that this reform wave gave birth to a new paradigm requires examination from the perspective of the specific institutional place and role of the Public Administration. As the administration lacks an autonomous legitimacy basis, it must conform to political, legal and democratic requirements. This raises several issues: for example, to what extent could rules be bypassed to achieve better results? What is the criterion for successful implementation when legality and related procedures reduce efficiency and effectiveness? How can accountability and control mechanisms function in this context?

The implications of such reforms and practices are a key topic of contemporary discussion. This is particularly evident given the experience of the reforms introduced during the high time of the New Public Management era, which revealed significant problems, contradictions and unresolved questions.

It is certain that the range of organisational and legal instruments of the state was broadened and diversified. The recognition of the rigidities inherent in public law rules and procedures, and the pursuit of efficiency and effectiveness, led to the expansion of options for organisational forms and managerial methods.

Does this represent a new administrative paradigm? No, to the extent that the core requirements stemming from the institutional role of public administration remain without alternative. Ensuring legality, equal treatment and supporting accountability mechanisms remain the essence of the old bureaucratic paradigm, despite its modernisation (“neo-Weberian”, “Post-NPM” etc.). It is generally acknowledged that The New Public Management has primarily affected peripheral aspects of public administration.

And I come to my second question:

II. If not a new paradigm, then what?

These practices indicate a reconsideration of administrative methods and generally the means of fulfilling various tasks, as well as a shift in the approach to alternatives. Historically the involvement of private actors in administrative processes was strictly regulated. The administration was responsible for providing services and fulfilling its functions by maintaining a distance from private interests, business and professionals. This often resulted in a rather strict separation between internal administrative operations and the external world.

The novel practices highlighted by the questionnaire can be seen as legacies of New Public Management reforms and ideas. They also represent a reconsideration of the operation of public bureaucracies, primarily in areas that do not affect the core requirements of public administration.

In my view, they exemplify the expansion of the range of instruments available to public administration. In other words, they constitute multi-purpose or multi-rationale tools but without the intense ideological colour they possessed in the 1990s.

What I mean by multi-purpose or multi-rationale is that they respond to various ad hoc challenges.

At the core of these current developments is an acknowledgement of administrative incapacity to respond to the challenges regarding the volume and quality of certain tasks, including the necessary expertise, and to social expectations. This may also be an expression of a lack of resources or a reluctance to develop this capacity internally to prevent an increase in public expenditure.

There is a general disappointment with governmental performance particularly in certain areas of service delivery and expertise -despite the digitalization that offered some solutions at the level of technological instruments. This is a result of several factors including policies of public expenditure reduction in the past decades which weakened or prevented administrative capacity from adapting to new and demanding conditions. Public administration was found under pressure, with limited resources and an increasing workload. Under these circumstances the requirements and expectations exceeded their capacity to fulfil their tasks.

This led to a pragmatic search for ways to address existing incapacity. Various techniques were employed from spatial and functional decentralisation to the delegation of preparatory, advisory and regulatory functions among other to non-majoritarian institutions such as independent authorities, to private institutions, including forms of self-regulation.

In many cases there is no unique or coherent criterion but rather an imaginative approach to compensate for observed weaknesses, followed by ad hoc arrangements to ensure accountability and control.

A common feature is that most of these techniques limit the volume of tasks to be performed by core or central administrative services, transferring them to ad hoc structures, to intermediaries and even to private institutions or professionals.

Such examples are the delegation of functions to regulatory authorities, to regulatory intermediaries for technical assessments, or self-regulation. They also include the externalisation of advisory functions to consultancy organisations and the allocation of managerial responsibilities to private managers or the use of certified private professionals for monitoring and control.

The externalisation of tasks and functions may be linked to an effort to control costs, while increasing available resources. Alongside cost-saving, other reasons for this approach include a lack of intra-administrative knowledge and expertise for advisory, monitoring and control functions and insufficient human resources relative to the volume of tasks. This allows the Public Administration to adapt to fluctuating work volumes, without employing new personnel or creating expectations of permanent integration into the civil service. It is also important to consider that this practice follows several decades of a reduction in state capacity, means and costs.

The fact that the functions to be performed are part of core state responsibilities and administrative operation leads to a wide variety of mechanisms to ensure that delegation, contractualization and outsourcing conform to certain standards. Contractual arrangements and certification procedures are such examples.

As the arsenal of instruments expands, legal means to ensure accountability and control tend to diversify. Specialised provisions are adopted not only in response to novel instruments but also to address specific administrative challenges. These policies are time and policy specific.

In this sense, such practices constitute pragmatic efforts to enhance the operational capacity of the administration. While some may be limited in certain circumstances, others are not. They are multi-purpose and multi-rationale, therefore tending to be time and policy specific. In other words, they are more pragmatic than paradigmatic.

To conclude: is it therefore all well and settled?

Regardless of their rationale, these new practices must be accommodated by both the administration and the judiciary. They require a place within the existing institutional architecture, a significant component of which is the organisation of accountability, responsibility and control.

The blurring of public and private practices, particularly in terms of organisational forms, delegation and externalisation, tends to produce a multitude of operational novelties that appear at odds with traditional bureaucratic and administrative principles. These principles are still valid and precious and need to be upheld and fulfilled. This challenge is a reminder of the importance of addressing such issues, particularly from the point of view of the judiciary.