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Questioning the Constitutional Order—A Comparison of the French and the U.S. Politics-Administration Dichotomy Controversies after World War II

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Abstract

By comparing the French and the U.S. American controversies on the appropriate position of public administration within the constitutional order of the state after World War II, this article aims to contribute to the historical clarification of the politics-administration dichotomy as one of the key ideas of administrative research and theory. The article underscores that the same phenomenon—the rejection of the dichotomy—has led to different conclusions among administrative scholars on both sides of the Atlantic. In the U.S. the dichotomy was rejected in favor of a reinforcement of the legislature and the judiciary as well as a more representative administration to preserve the plurality of interests of American society. In contrast, the French rejection was aimed towards strengthening the executive and the administrative elite as guardian of the general interest. The article illustrates how ideas and values about public administration change according to different spatiotemporal contexts. If these contexts are disregarded, understanding remains fragmentary at best, if not misleading.

Questioning the Constitutional Order—A Comparison of the French and the U.S. Politics-Administration Dichotomy Controversies after World War II

It is acknowledged that the politics-administration dichotomy represents a key concept in Public Administration, which has provided much controversy until today (for an overview, see Georgiou, 2014; Overeem, 2012).[1] According to Fabio Rugge (2003, p. 179), "the separation of politics and administration found a long-lasting anchorage in the doctrine about the separation of powers." Paul Van Riper (1984, p. 214) adds that underneath "much of the dichotomy controversy lies the bedrock prime cause of it all, our classic separation (balance, if you prefer) of powers constitutional doctrine." The remark in brackets points towards a key difference between traditional notions of the *trias politica* in the U.S. and Continental Europe. While the focus in the U.S. is usually on establishing equilibrium between the constitutional powers with checks and balances (Vile, 1967, p.240), Continental Europeans tend towards a literal understanding of the doctrine by separating the three branches (Rutgers, 2001a, p. 233). As a result, the position of the administration within the state's constitutional order has traditionally been interpreted differently in the U.S. and Continental Europe. Considering that this difference has thus far enjoyed little attention in administrative research (Overeem, 2012; Rohr, 1995; Rutgers, 2000) and that, according to Brian Cook (2016, p. 5), "the separation of powers and the administrative state have at best an uneasy history in the theory and practice of American governance," this article contributes to filling a gap by comparing the French with the U.S. controversy on the dichotomy after World War II. We concentrate our study on the post-war period, because at that time the proper place of administration in the political system provoked fierce controversies on both sides of the Atlantic.

In what follows, we first illustrate the theoretical and methodological approach of our historical inquiry in order to demonstrate the relevance of the comparison. We then recapitulate how the politics-administration dichotomy was debated in the U.S., before turning to the French controversy on the subject. Subsequently, by comparing the two cases,

we demonstrate that the dichotomy was rejected by both U.S. and French scholars, but on different grounds: while the dichotomy was abandoned in the U.S. in favor of a reinforced legislature and judiciary, the French rejection was used to strengthen the executive. Understanding this difference sheds light on the characteristically French confidence in the administrative elite and the emphasis on public administration's role in protecting the general interest. The concluding section discusses the implications of this study for contemporary Public Administration, especially with regard to the notion of intellectual traditions in comparative research. More specifically, we address the question of whether the distinct traditional flavors of U.S. and Continental European Public Administration—an American 'stateless' tradition as opposed to a European 'stateness' tradition (Novak, 2008; Rutgers, 2001a)—should essentially be regarded as conceptual abstractions, or whether they represent empirically realistic accounts of the development of Public Administration on both continents.

Theoretical and Methodological Considerations

To illustrate the design of our comparative historical inquiry, this section starts with a more detailed definition of our object of investigation—the politics-administration dichotomy in the context of the *trias politica*. For the sake of analytical clarity, our historical comparison then needs a 'baseline', with which we can transform the "experience of the past into a meaningful history for the present" (Rüsen, 2012, p. 45). We therefore draw a heuristic distinction between the U.S. and French traditions of constitutional thought, before we discuss the importance of comparing the French with the U.S. case. We close this section by explaining how we have selected our body of primary sources.

Defining the Object of Investigation

The term 'dichotomy' is usually used to refer to a distinction between two mutually exclusive and opposed parts. The notion that public administration is somehow excluded from and

opposed to politics or policy making has been approached from many different perspectives, and in divergent contexts, which is why we can trace a considerable variety of explicit and implicit uses of the politics-administration dichotomy (Overeem & Rutgers, 2003, pp. 163-164; Rutgers, 2001b). Mentioning both explicit and implicit uses is important, since Continental European scholars have generally applied the concept much less explicitly and directly than their U.S. colleagues, who started regularly using the term 'politics-administration dichotomy' in the 1950s (Overeem 2012, p. 14).

Regardless of the explicit or implicit use of the dichotomy, the concept entails at least three meanings: one analytical, one empirical, and one normative. From an analytical perspective, the dichotomy serves as an ideal type or meaningfully adequate abstraction of the relationship between politics and administration (Rutgers, 2001b, p.14). By comparing the ideal type with an actual observation of this relationship in a particular context, we can arrive at an interpretative understanding of empirical reality (Weber, 1980, p. 9). Ideal-typically, the dichotomy between politics and administration refers to the distinction between the two elementary functions of government: willing and acting, or law making and law enforcement. This distinction lies at the basis of both the *trias politica* and the dichotomy, the former obviously being the historical predecessor of the latter.

In trying to reconcile the two concepts, we may either think of the dichotomy as a separation between the legislature and the executive, or as a dividing line that runs within a constitutional branch (usually the executive) between political superiors and administrative subordinates. In other words, the dichotomy has to do with the division of labor and authority between elected popular representatives or the government and appointed administrators (Hansen & Ejersbo, 2002, pp. 733-734). While it is the task of politics to define the general rules of governmental intervention by formulating laws and regulations and to subsequently provide policy leadership and legislative oversight, it is the job of administrators to apply these general rules to particular cases in a dutiful, politically neutral, and technically

competent way (Demir & Nyhan, 2008, p. 82). Since ideal types are neither meant to be empirically nor normatively exemplary, the analytical meaning of the dichotomy does not only differ from its empirical meaning, but also from its normative meaning. The normative aim of separating politics and administration may either be to defend the democratically legitimate process of policy making against the danger of an overwhelming administrative apparatus, or to protect the efficient administration of public affairs from the volatile process of policy making (Overeem, 2012). As will be shown later, it was especially the dichotomy's normative meaning that caused thought-provoking controversies on both sides of the Atlantic.

Theorizing Ideational Change against the Background of Intellectual Traditions

We assume that administrative scholars are influenced by problems, which they "attempt to solve by putting forward concepts, methods, or theories which are then subjected to criticism" (Farr, 1995, p. 135). The underlying assumption of this inquiry is that we can explain ideational change by identifying statements of problems in the writings of French and U.S. scholars, and by then studying their responses to these problems (Bevir, 2002, pp. 198-200). Problems may either "be external ones, presented by the outside world of politics," or they may "be internal ones, presented by a particular intellectual tradition" (Farr, 1995, p. 135). To compare ideational change at the aggregate level, we apply the concept of discourse, which "concerns the continued, enduring and interactive exchange, creation, and debate of shared interpretations (meanings)" (Rutgers, 2003, p.12). We therefore regard our primary sources as artefacts of a cluster of writings as a whole, rather than as a sum of individual statements. As our analytical focus is on competing discursive problematisations of the politics-administration dichotomy, we call the discourses under consideration controversies.

In the sense of inherited ideas about the history of government in a specific national context, intellectual traditions are commonly regarded in comparative Public Administration as cultural variations, historical legacies, or path dependencies (Yesilkagit, 2010). In this

context, it is argued that the Anglo-American tradition "is taken to its greatest extreme in the United States", while the Napoleonic tradition finds its purest manifestation in France (Painter & Peters, 2010, p. 20). We may thus start from the assumption that the French and the U.S. intellectual traditions have followed distinct ideational paths.

According to John Rohr (1992, p. 231), the principle of separation of powers is fundamental to both U.S. and French constitutional thought, but the common understandings of this principle in the two countries pull in opposite directions. The U.S. Constitution was designed as a social contract based on the premises of individual liberty, equality, and property, which are irrevocable by implication. What ties Americans together politically is "their common recognition or acknowledgement of certain rules of conduct," rather than any "set of substantive ends or objectives" (Spicer, 2004, p. 357). The traditional U.S. form of political organization may thus be interpreted as civil association, "in which men and women see themselves as free to pursue their own particular interests and values" (Spicer, 2004, p. 357). As the political realm is derived from the autonomy of individuals, the abstract notion of the state does not serve as overarching concept of social reality. Negative constitutionalism is emphasized in order to protect individual rights from governmental abuse. "For Americans, it is not Congress, the president, or the judiciary that is sovereign, because only the people are sovereign and this sovereignty is expressed in the Constitution" (Rohr, 1992, p. 240). In order to prevent one governmental power from becoming overwhelming, much importance is attached to the balance of powers. Another corollary of that idea is that administration needs to be bound to democratic politics, which implies the twofold challenge of either subordinating administration to the three constitutional branches or giving it "independent legitimacy as a separate public authority" (Overeem, 2012, p. 75).

In contrast, an organic notion of the state prevails in the French intellectual tradition, according to which "state and society are intertwined to the extent that it is almost impossible to separate them" (Painter & Peters, 2010, p. 6).[2] The typical French form of political

organization may be called purposive association, wherein “individuals recognize themselves as united or bound together for the joint pursuit of some coherent set of substantive purposes or ends” (Spicer, 2004, p. 355). The state is expected to play an active role in resolving social conflicts and positive constitutionalism is underscored with the aim of strengthening governmental capacity and effectiveness in promoting social welfare. Moreover, the French notion of the executive does, in contrast to U.S. constitutional thought, not only entail the President, but also the ministries, the secretaries of state, government agencies, and the civil service in general (Duverger, 1970, p. 683; Vedel, 1964, p. 10). In this context, to put it in Alexandre Vivien’s (1859, cited in Martin, 1987, p. 298) words, the “executive power itself is divided into two branches: the political, which is to say the moral direction of the general interests of the nation; and the administrative, which consists principally in the accomplishment of public services.” Hence, the politics-administration dichotomy is in France usually considered to run within the executive. The administration represents an integral part of the state, rather than, for instance, the parties in parliament. Instead of serving the particular interests of the latter, public administration is expected to serve the state’s general will (Overeem, 2012, p. 75). The state thus represents the centrifugal force around which administrative studies evolve (Rutgers, 2001a, pp. 226-228).

Why Comparing France to the U.S.?

We argue that the relevance of comparing the French with the U.S. academic controversy on the dichotomy after World War II is threefold. First, from a theoretical perspective, it is interesting to exemplify how different actors in a different ideational context respond to a similar problem with a similar reaction to arrive at a different solution. Rohr (1995, p. 24) holds that “perhaps nothing differentiates administration in France and in the United States more clearly than the strong-state tradition of the former and the latter’s weak-state tradition.” Along the lines of this observation, the U.S. and French intellectual traditions are sometimes

labelled in administrative literature as a ‘stateless’ and a ‘stateness’ narrative respectively (Rutgers, 2001a; Stillman, 1997). Patrick Overeem (2015, p. 52), for instance, calls attention to the “difference between American ‘statelessness’ and European ‘stateness’” by claiming that it is due to their strong sense of state that Europeans “would be tempted to see the American Constitution” as epitome of the “American ‘state’ rather than of American society.”

Whereas it seems safe to say that France has a “strong state tradition” (Chevallier, 1996, p. 67), the notion of U.S. ‘statelessness’ calls for clarification: More recent historical scholarship shows that the story of the weak American state is a myth (Balogh, 2009; King & Lieberman, 2009; Novak, 2008). This is why empirical and normative statements regarding U.S. ‘statelessness’ have to be differentiated. Referring to Michael Mann’s distinction between a despotic and an infrastructural meaning of state power, William Novak (2008) explains that the infrastructural power of the American state has always been extensive. This is why the ‘weak-state’ narrative, let alone the ‘stateless’ narrative, can hardly be sustained from an empirical perspective. However, from a normative standpoint, the U.S. state continues to be viewed as “something of an oxymoron in a land of alleged ‘anti-statism’ and ‘statelessness’” (Novak, 2008, p. 754). Rather than to deal with the proliferation of the administrative state, the U.S. constitutional system of checks and balances had been designed to prevent despotic power (Arnold, 1986, p. 10; Rosenbloom, O’Leary & Chanin, 2010, p. 305). As Novak (2008, p. 763) states, it is this ideational “anti-despotic penchant for balancing powers” and for “divided and dispersed organization of governance that most have in mind when they talk too loosely about American anti-statism or statelessness.” Hence, the U.S. continues to be considered to have limited government, although its President, legislature, and courts are extremely powerful. As the normative narrative of ‘anti-statism’ or ‘statelessness’ persists, we may want to gain further insights into whether it represents an accurate account of U.S. administrative thought in the period under consideration.

Second, the comparison between the French and the U.S. case may contribute to understanding what is unknown against the background of what is well-known. There has been very little research on the 20th century intellectual history of French Public Administration in general (Bezes, 2002, 2009; Chevallier, 1986; Chevallier & Loschak, 1974; Payre, 2002), and the post-war reinterpretation of the politics-administration dichotomy in particular (X, 2010, 2015), although French authors have been acquainted with the dichotomy ever since Montesquieu's classic formulation of the *trias politica* (Martin, 1987). In contrast, it has been shown that the U.S. controversy reached its peak in the 1940s and 1950s. It mainly consisted in a critical reaction of administrative scholars taking a political approach against Public Administration's orthodoxy, including the highly influential scientific management literature (e.g. Henry, 1987; Keller, 2006; Kettl, 2015, pp. 1-26; Rosenbloom, 1983).[3]

The third reason that calls for comparing the French with the U.S. case is that practically every founding text of the French *science administrative* (science of administration) bears traces of an American example. As will become clear in the remainder of this paper, French Public Administration has always been dominated by administrative law until it faced an existential crisis in the aftermath of World War II. Several administrative law scholars managed to overcome this crisis by establishing a new science of administration as a side-discipline of administrative law at French universities. The textbooks of this new approach inevitably begin with a presentation of the development of U.S. Public Administration (Chevallier & Loschak, 1974; Debbasch, 1971; Gournay, 1978). Charles Debbasch (1971, p. 12), for instance, argued in favor of importing the "modern tendencies of the American science of administration," because they "reintroduced the aspects of the relationship between administration and politics as well as psychological and sociological factors of administration."[4] The general praise notwithstanding, it remained clear that the "French approach is very different from the American approach, since juridical issues form the explicit starting point of administrative analysis in France" (Bertrand & Long, 1960, p. 11).

Identifying the Appropriate Body of Primary Sources

The U.S. controversy has been comparably well examined, which is why we base our discussion on secondary literature and some classics regarding the controversy from roughly 1930 to 1960. We thus apply a similar approach as Daniel Martin (1987, p. 298) in selecting U.S. sources "for their utility in explaining the French literature and comparing it to the American equivalents." Our focus for choosing the French sources is on the period from the end of World War II to the 1970s, since this time span corresponds to the period of crisis of administrative law, the creation of the French science of administration, and a related controversy on the right position of administration in the state's constitutional order. We have consulted the writings of those administrative law scholars who by writing handbooks, organizing university courses, and participating in the work of the International Institute of Administrative Sciences attempted to establish the French science of administration. Since this distinguished circle consisted of no more than a dozen scholars, we are able to provide a comprehensive sample of sources reflecting the most relevant discourse on the relationship between politics and administration within the emerging French science of administration.

As we are predominantly interested here in the intellectual history of Public Administration, we do not take into account the numerous discussions about administrative reforms that took place among French practitioners. While administrative law always benefited from its high academic reputation and support, the managerial approach to public administration was until roughly the late 1960s lowered to the level of applied knowledge and disseminated mainly among practitioners and some reformist groups (Dubois & Dulong, 1999; Dulong, 1997). Neither do we consider the writings of French organization scholars, because their focus was not on the place of the administration within the state's constitutional order, but rather on the internal functioning of public organizations. Finally, as regards the treatment of public administration in French political science, there was until the 1970s a high porosity between law and political science. Administrative lawyers were the most visible

experts on public administration who regularly taught and published in the fields of political science. It thus seems adequate to focus on the writings of administrative law scholars and especially on the proponents of the new science of administration.

The United States: From Scientific Management to Public Administration

This section aims to recapitulate the most intense U.S. controversy in terms of the renunciation of the politics-administration dichotomy and the aim of rebalancing the executive, legislative, and judicial powers. This controversy took place between authors of scientific management and scholars who after World War II approached public administration from a political perspective.

Scientific Management and the Dichotomy

In the closing years of the 19th century, the processes of industrialization, urbanization, democratization, and immigration provoked social tensions, which led Progressive reformers to advocate "reform through enhancing the efficiency of government functioning and the strengthening of the executive at the federal level to establish a positive, administrative state" (Raadschelders, 2000, p. 508; cf. Arnold, 1986, pp. 22-23; Dodd & Schott, 1979, pp. 23-29). Since the courts were usually hostile to the development of the administrative state (Rosenbloom, O'Leary & Chanin, 2010, pp. 36-39), it seemed reasonable to base Public Administration on management rather than common law (White, 1926). The managerial spirit of early U.S. Public Administration resonated well with the emerging business culture while at the same time promising to displace the corrupt political machinations and symbiotic alliances between political bosses and immigrant masses that were characteristic of the 19th century spoils system (Hofstadter, 1955, X 2013).

"Complemented by Progressive reform notions such as separating politics and administration, ensuring the neutral competence of administrators, and identifying

administrative principles of universal applicability" (Lynn, 2006, p. 164), scientific management emerged in both public and private sectors between the early 20th century and the end of the 1930s (Rosenbloom, O'Leary & Chanin, 2010, pp. 5-6). This period corresponds with what Barry Karl (1963, p. 218) has called "a transition from the legislature to the executive as the center of reform." According to Luther Gulick (1933, p. 65), the traditional "tripartite division of powers," which John Locke and Montesquieu had proposed to protect "civil liberty and freedom from arbitrary power", did no longer correspond to the "industrial and machine era". A new concept was needed, which envisioned a strengthened executive with the authority of "policy planning and execution" as well as a legislature with "the veto over major policy, and second, the right to audit and investigate" (Gulick, 1933, pp. 65-66; cf. Polenberg, 1966, p. 16). Declaring that Public Administration was both science and management meant that it did not need to incorporate political values into its study. By dichotomizing the analytical fields of politics and administration, scientific management intended to establish administration as a value-free or 'real' scientific object of investigation.

The key point was to get the government's job done as efficiently as possible. Gulick (1937, p. 10) criticized "the common American practice of appointing unqualified laymen and politicians to technical positions' and added that the "heterogeneous functions of 'politics' and 'administration'" could not be combined "within the structure of the administration without producing inefficiency." However, the dichotomy was the concept that would guarantee not only efficient, but also responsible government. Because administrators were viewed as non-partisan, rule-bound professionals, controlled by a hierarchical line of superiors all the way up to the elected and thus democratically legitimized President, they faced very little skepticism (Whicker, Olshfski, & Strickland, 1993, p. 531). Since the administration was considered a subordinate part of the executive, the dichotomy provided its advocates with a means to enhance the executive's authority (Rohr, 1986, p. 137).

The President's Committee on Administrative Management, which was commissioned in

1937 by President Roosevelt to reform the executive branch and public administration of the U.S. government, made use of the tenets of scientific management (Karl, 1963, p. 212). The committee's members, Louis Brownlow, Charles Merriam and Gulick, shared with President Roosevelt the opinion that strong centralized executive leadership and expert administration were essential to both efficient and legitimate democratic government (Arnold, 1986, p. 103; Polenberg, 1966, pp. 16-21). They felt no inclination for a substantial legislative and judicial involvement in federal administration (Martin 1952, p. 67; Rosenbloom, 2000, p. 40). Consequently, a dividing line between politics and administration was drawn not only within the executive branch, but also between the executive and the other two branches.[5]

The Problematisation of the Dichotomy after World War II

Proponents of the post-war political approach to public administration criticized the pre-war managerial literature for picturing the "politics-administration dichotomy (…) as a self-evident truth and as a desirable goal" (Sayre, 1958, p. 103). They called for a reformulation of administrative theory that would see public administration as "one of the major political processes" including the "exercise of discretionary power" and "the making of value choices" (Sayre, 1958, p. 104). As David Rosenbloom (1983, p. 224) puts it, the political approach is "more closely associated with legislative concerns. It views public administrators as supplementary law makers and policy makers generally. Hence its emphasis is on representativeness, responsiveness, and accountability."

Norton Long (1949, pp. 258-259), for instance, argued that the dichotomy lacked empirical validity, because it neglects the issue of power. He claimed that the authors of the pre-war years had ignored the institutional reality of U.S. politics, which would never provide the executive with a unified set of aims that could be handed down the administrative chain of command to serve the interest of the whole pluralistic society. Discussing the adequacy of the political neutrality of public administration, he doubted whether administrators would fulfil

the will of the President and the Congress without value considerations. Long (1952, p. 813) was quite confident that public administration would absorb the diverse wills of the people and transform them into responsible policy proposals, because the civil service as a body represented a better "sample of the mass of the people than Congress." He insisted that changes be made to

> "the theory of the desirability of administrative neutrality. It is the balance of social forces in the bureaucracy that enables it both to perform an important part in the process of representation and to serve as a needed addition to a functioning division of power in government. Were the administrative branch ever to become a neutral instrument, it would, as a compact and homogeneous power group, either set up shop on its own account or provide the weapon for some other group bent on subverting the constitution." (Long, 1952, p. 817)

Rather than as a subdivision of the executive, administration thus had to be perceived and studied as the "fourth branch of government, taking a rightful place beside President, Congress, and Courts" (Long, 1952, p. 818). Accordingly, the focus was laid on the balance of powers, instead of their separation.

It was also doubted whether the scientific management's ontological premise of the rational individual was accurate (Dahl, 1947, p. 7). It was argued that instead of simply maximizing individual and organizational goals, administrators were actually relying upon routines and collectively shared values and norms (Whicker, Olshfski, & Strickland, 1993, p. 536). In this context, scientific management was criticized for its heavy emphasis on efficiency as the main administrative value (Waldo, 2006, pp. 202-204). Stating that the concentration camps of "Belsen and Dachau were 'efficient' by one scale of values," Robert Dahl (1947, pp. 2-3) claimed that "the great question of responsibility" was more important in a democratic society than "simple efficiency in operation." John Gaus (1938, p. 133) added that instead of sharply separating governmental "knowing, thinking, and planning functions" from "doing functions," public administration had to entail both policy-making and execution. It was even the "principal function of public administration to reconcile and to mesh the functions of politicians and the functions of experts in the service of society" (Gaus, 1949, p.

1036). In order to do so, the normative identity of public administration had to be based on the values of responsiveness, responsibility, and accountability, rather than efficiency. This reinterpretation made the politics-administration dichotomy obsolete.

At the institutional level, the relationship between the legislative and executive branches changed as well. While before the war, Congress had been "incapable of exercising anything more than haphazard oversight" over administrative activities (Rosenbloom, 2000, p. 40), it now "began to become painfully aware of the challenge presented by the growth of administration and to speak for the first time seriously of the necessity for oversight of the administrative behemoth it had created" (Dodd & Schott, 1979, p. 34). Rather than to accept public administration as fourth governmental branch, Congress chose to treat federal administrative agencies as extensions of its own, placing great emphasis on subordinating them to legislative influence (Rosenbloom, 2000, p. 41). A major step in this direction was made in 1946 when the Administrative Procedure Act (APA) was adopted (Rosenbloom, O'Learly & Chanin, 2010, pp. 57-60; Shapiro, 1988, p. 39; Stewart, 1975, pp. 1678-1679). The act established transparency standards for federal administrative agencies, regulated their rule-making procedures, and invited comments and participation from concerned parties.

The APA was also an important step toward reorganizing the congressional committee structure that supervised federal administrative agencies throughout the policy process (Dodd & Schott, 1979; Rosenbloom, 2002, pp. 60-61). This resulted in an enhanced information flow between Congress and the administration, and enabled the former to feed the latter with its vision. Civil servants were thus able to better anticipate parliamentary concerns and adapt to them (Arnold, 1980, p. 280). Moreover, specific political-administrative interactions took place within congressional subcommittees, which led to important policy decisions and to what Morris Fiorina (1989, p. 62) has called a "decentralization of congressional power." On one hand, the increased specialization within subcommittees may have led to a dispersion of congressional control, which enabled individual Congress members to influence policy

decisions and administrative procedures according to their own particular interests (Fiorina, 1989, pp. 62-63). On the other hand, as called for by the post-war scholars mentioned above, the establishment of mutually profitable alliances between politicians, interest groups, and administrators opened the path for a more pluralistic representation of interests in administrative processes. Especially when compared to the tenets of the pre-war period, we may conclude that the APA allowed the Congress for "repositioning both itself and the agencies in the constitutional structure" (Rosenbloom, 2000, p. 40).

Finally, by integrating existing administrative practice into law, the APA contributed to restructuring judicial oversight over federal administration. As Martin Shapiro (1988, p. 76) puts it, "once the APA was in place, it was almost inevitable that courts would labor to create a detailed set of legal requirements to fill out its rudimentary provisions on agency rule making." Courts were granted greater authority to determine whether administrative procedures were acceptable in terms of due process, the promotion of the rule of law, and the protection of individual rights. On the whole, both the legislature and the judiciary were able to take an important constitutional role in checking the power of public administration and aligning it with constitutional values (Rosenbloom, 2000, p. 39).

France: Public Administration under the Umbrella of Administrative Law

French Public Administration has always been dominated by administrative law and has mainly been conceptualized by the *Conseil d'État* (Council of State). Whereas in the U.S. it was the managerial approach that advocated an influential executive, in France it was administrative law that shaped the *trias politica* towards a predominance of the executive and accentuated the separation between politics and administration. When administrative law faced a crisis after World War II, the analytical adequacy and practicability of the dichotomy was drawn into question and both the division between politics and administration and the separation of powers experienced reinterpretation.

The Council of State, Administrative Law, and the Dichotomy

The Council of State represents the institutional centerpiece of French administrative research and practice. Created in 1799, it gradually developed from a safeguard of the absolutist state to an institution in charge of limiting the state's authority. Towards the end of the 19th century, it became the highest administrative court, tasked with resolving legal conflicts between the administration and the citizens (Woehrling, 1984, p. 19). It was now perceived as a guardian of the balance between the *Intérêt Général* (general interest) and the protection of individual rights (Puget, 1951). To arbitrate the conflicts between citizens and public authorities, the council's case law was systematized, giving rise to administrative law as an autonomous academic discipline and monopolizing the study of administration until World War II (Debbasch, 1978; Vanneuville, 2003).

The council may be interpreted as an executive-judiciary hybrid, since it is simultaneously the highest administrative body, the supreme court of administrative justice, and an intimate advisor of the executive. However, the balance of power is pulled towards the executive as the council represents an administrative rule-maker while at the same time being responsible for the enforcement of these rules (Burdeau, 1995). The councilors are not ordinary judges, but high public servants who can be appointed to join the active administration for several years (*service extraordinaire*) before returning to the council. Traditionally, the twenty best students of the *École nationale d'administration* (National School of Administration) join the council's ranks every year, along with externally appointed members and lower-rank officials (Eymeri-Douzans, 2001). This duality of jurisdictions is characteristic of the French case, in which the administration itself—rather than the ordinary judicature—is considered the legitimate authority to assess administrative acts made in the pursuit of the general interest (Debbasch, 1978). Finally, a significant part of administrative rules is formulated through case law, which does not require parliament approval. Considering the predominant position of the Council of State, the French administrative

system is self-regulated to a large extent, conferring relatively little regulatory power to the legislative and none to the judiciary branch.

The prevalence of the legal approach to administrative thinking explains the wide acceptance of the politics-administration dichotomy before World War II. As administrative law was largely based on Carré de Malberg's notion of the instrumentality of administration, administrators were viewed exclusively as neutral servants who were expected to implement policies by strictly adhering to legal rules (Mescheriakoff, 1990, p. 360). These rules were the key mechanism guiding and controlling the professional activity of administrators (Chevallier, 1986; Favre, 1989). Accordingly, the French public service drew both its legitimacy and rationale for administrative practice from the normative source of law. Although some law professors and high public servants discussed the possibilities of extending the study of administration beyond simple juridical rules already before the war, these discussions had very little practical repercussions (Payre, 2006). It was not until the 1940s that important changes occurred within the doctrine of administrative law—changes that challenged the practical and theoretical applicability of the politics-administration dichotomy.

The Problematisation of the Dichotomy within the Science of Administration

Administrative law in general, and the notion of the instrumentality of administration in particular, were challenged mainly from two sides—one concerning administrative practice and one concerning the study of administration (Chevallier, 1986). The first problem has to do with the emergence of new public fields and hybrid institutions that occurred in several domains of state intervention after World War II, blurring the dividing line between private and public law. For example, public-private enterprises emerged rapidly due to efforts to put the industry back on track. As administrative law increasingly had to cohabit with other juridical regimes to respond successfully to regulatory needs, the keystone of administrative law—the notion of the administration as neutral servant of the public interest—was drawn

into question. Given that public servants were governed by legal rules designed to cover public issues exclusively, their involvement in public-private administrative procedures was dubious (Langrod, 1955, p. 689; Rivero, 1953). The increasing diversity of administrative fields of action at the same time emphasized the role of administrators as co-creators of legal rules (Langrod, 1954). As a consequence, the practical applicability of the politics-administration dichotomy was called into question.

The second problem has to do with the emergence of political science as a self-conscious academic discipline (Chevallier, 1986; X, 2010). Until World War II, law faculties had succeeded in maintaining most of the currents of the study of the state and administration under their purview (Favre, 1989). This monopoly was broken towards the end of the 1940s, when political scientists started to criticize administrative law scholars for their excessive abstraction in analyzing public administration. More specifically, the exponents of administrative law were blamed for neglecting the study of political actors such as parties or trade unions, and for concentrating on normative administrative rules at the expense of institutional realities (Langrod, 1953; Pelloux, 1947, p. 59). In this context, political scientists argued that public administration could no longer be studied separately from politics.

Defending the Territory of Administrative Law by Giving Up the Dichotomy

In response to the challenges to instrumental public administration, administrative law scholars in the 1950s started to adapt their analytical tools to the greater variability and scope of state intervention (Bonnaud-Delamare, 1953; X, 2015). On one hand, they formulated new rules of administrative law to avoid conceding the regulation of public economic activities to private law (Langrod, 1955), and to cope with the blurred legal responsibilities between the public and the private sector (Debbasch, 1971). On the other hand, it became clear that many emerging administrative activities and procedures were not yet covered by legal rules (for example, planning activities and post-war productivism) (Bezes, 2002, 2009; Chevallier,

1986, pp. 33-37; Spenlehauer, 1999). Public servants could therefore no longer implement existing law neutrally (Langrod, 1954; Milhaud, 1956). Georges Langrod (1953) claimed that more practice-oriented administrative rules could only be formulated after understanding the ways in which public servants make decisions about issues that have not yet been fixed legally. In this context, he relied heavily on Herbert Simon's work on administrative behavior (Langrod, 1954, p. 27). Emphasizing administrative law's need for more flexibility and for allowing public servants more room to maneuver, scholars of administrative law abandoned their vision of public administration as being separate from and subordinate to politics. They claimed that the politics-administration dichotomy was too rigid and fictive, and suffered from a lack of methodological reflexivity (Langrod, 1953, p. 840).

The reaction of the Council of State and some law professors culminated in the establishment of a new sub-discipline of administrative law—the science of administration—which widened the scope of juridical expertise beyond legal aspects of state building. Several councilors and scholars of administrative law accepted that Public Administration had to concern both the actual functioning of the administration and its juridical framework (Chevallier & Loschak, 1974). It was claimed that "administrative law can less and less be viewed in separation from the science of administration, which alone is capable of renewing administrative law by giving it its plenitude" (Chemillier-Gendreau, 1970, p. 625). Whereas law and case law constituted the normative part of Public Administration, the "positive discipline" of the science of administration had to examine "how a legal norm is enforced in practice" (Gournay, 1978, p. 7). However, although the political character of the administrative practice was acknowledged, legal rule making remained at the center of reflection. The council's rationale was to better understand new administrative practices with the aim of maintaining a high level of quality in controlling administrative activity.

By extending the reach of administrative law, its exponents could react to the intrusion of political science into their territory. The establishment of a para-juridical discipline of Public

Administration and the rejection of the politics-administration dichotomy may thus be regarded as an attempt to defend the supremacy of the legal approach to public administration. Unsurprisingly, political scientists and, starting in the 1970s, exponents of the managerial approach criticized the new science of administration for being nothing more than a simple extension of administrative law (Chevallier, 1986, p. 44; Nioche, 1982, p. 10). Despite this criticism, the legal perspective continued to be the yardstick of administrative analysis and the Council of State maintained its central position regarding both administrative studies and the constitutional architecture of the state. Considering that the council represented a specific pole of the executive branch, it is hardly surprising that the reform of the French political order, which is illustrated in the following section, led to the strengthening of the executive.

The Reinforcement of the Executive in the Fifth Republic

Both the Third (1870-1940) and the Fourth Republics (1946-1958) were characterized by the partisan struggle for power (Le Pillouer, 2004, pp. 306-308; Rohr, 1992, p. 236). The government was overthrown almost annually by the parliament between 1946 and 1958, thus impeding political continuity. In the aftermath of the war, the call for more administrative independence grew louder. It was justified theoretically by the notion of general interest, which not only constituted the administration's *raison d'être* but also implied its political unaccountability (Suleiman, 1973, p. 745). Hence, the experience of political instability justified the growing influence of high public servants within the state.

Simultaneously, General de Gaulle's difficulties in ending the war in Algeria (1954-1962) jeopardized the weak foundations of the Fourth Republic and made him work towards the birth of the Fifth Republic (1958) with a strengthened presidency (Rohr, 1992). Striving for institutional renovations, especially the members of the Council of State prepared the new Constitution (Langrod, 1959, p. 332). According to Henry Puget (1963, p. 222), a council member and prominent scholar of the science of administration,

> "The Constitution of October 4, 1958 profoundly altered the whole system (…). The parliament is no longer the exclusive legislator (…). The new Constitution aimed to create a strong executive and to restrict as much as possible the legislative work of the parliament, of which the constitution displayed distrust. Introducing a momentous change, it imposed strict limits to the legislation."

This citation exemplifies not only the councilors' explicit distrust in the parliament, but also their aim to strengthen the executive. Although this aim had already existed during the inter-war period (Payre, 2006), the context was in the 1950s favorable for its accomplishment. The central idea was to redress political instability by assigning legislative power to executive bodies (Le Pillouer, 2004, p. 332). In fact, the massive incorporation of legal provisions into the executive sphere led some authors to the conclusion that "the executive has in 1958 become the regular legislator" (Tsoutsos, 1978, p. 324). The weakening of the parliament made the executive even more dependent on administrative bodies, and the idea that administration contributes to policy-making was further strengthened.

The executive's increased regulatory power was justified from two perspectives. For efficient policy-making, the rationale was to delegate more authority to the executive to pursue the common good. To enhance legal accountability, the Council of State was to ensure that the legal requirements of executive action were met. The empowered executive was thus counterbalanced by the increased scope of control assigned to administrative judges (Woehrling, 1984), who performed this task through the renewed administrative law. The tight link between this highest administrative body and the government once more becomes apparent: The constant interaction between legitimacy by efficiency (which was to be ensured by the empowered executive and the recognition of its enhanced rule-making role), and legitimacy by legality (which was to be attained by the judges' increased legal control over executive action) reinforced their interdependent roles in the French politico-institutional order. The rejection of the politics-administration dichotomy thus went along with a clear expansion of executive power.

Comparing the French and the U.S. Controversies

Comparing the two cases, we find that the politics-administration dichotomy was rejected in both countries, but for different reasons. Before World War II, American authors of scientific management argued in favor of a strict separation of political and administrative functions of government to insulate the administration from the meddlesome partisan struggle for political power and policy making. They underlined efficient policy implementation as the most important governmental purpose and intended to strengthen the executive.

After World War II, by arguing that administration cannot and should not be separated from politics, advocates of the political approach to Public Administration aimed to establish themselves in a research field which had previously been dominated by scientific management. They criticized the latter's focus on efficiency and aimed to reduce the executive's influence. Public administration was no longer regarded as neutral instrument for realizing whatever aims elected officials may have set. Instead, the discretion of administrative agencies in policy making was accepted as empirical reality, and the representation of pluralistic interests throughout administrative processes as normative necessity. The legislative concerns of representativeness, responsiveness, and accountability were now regarded as the central values for the U.S. political system, which had to be taken into account within all constitutional branches including the administration. It thus appears that the scholarly discourse on the constitutional principle of the *trias politica* was concerned with a rebalancing of powers. The administration was no longer seen as a subordinate and instrumental part of the executive, but as a fourth branch of government or "as encompassing all powers of the state" (Overeem & Rutgers, 2003, p. 175). Consequently, the politics-administration dichotomy was abandoned in favor of a more representative administration.

Similarly to post-war administrative research and theory, the U.S. Congress became increasingly aware of the empirical inadequacy of the dichotomy between politics and administration. However, instead of freeing federal administration as a fourth governmental

branch, Congress aimed to curb the legislative and judiciary power of administrative agencies by subordinating them to congressional influence and judicial control. As a consequence, the judiciary gradually established “rights for individuals in their encounters with public administrators” (Rosenbloom, 2000, p. 44). In addition, the post-war years were characterized by an intensified interaction between legislators and civil servants in legislative (sub)committees. The relationship between politics and administration may thus be described as interdependent and mutually influenced, rather than as a master’s active control over a servant’s passive fulfillment of duties (Arnold, 1980; Dodd & Schott, 1979).

The French study of public administration had always been dominated by administrative law, whose proponents had traditionally considered administration as an instrument of policy execution with no will of its own, thus upholding the dichotomy between the administration and the political branches of the state. However, the juridical-institutional changes that occurred during and after the war breached the fundamental assumptions of administrative law, which was therefore drawn into a crisis. In both administrative theory and practice, the dichotomy was rejected and the notion of the administration’s instrumentality was replaced by the recognition of its sub-legislative and sub-regulatory authority. As did every administrative activity, these new prerogatives had to be controlled by the Council of State. This legal control was considered a way of protecting citizens against the authority of the state, while the powers delegated to the executive were simultaneously viewed as a means of improving the unity of executive action. The separation of the executive and legislative powers was emphasized to counter the political instability that characterized the post-war period in France. The high status of Council of State members underscores the self-regulatory aspect of the executive in post-war France. The central idea was to legitimize the predominance of the executive branch within the French constitutional order with regard to both legality and efficiency. Furthermore, the emergent field of political science added a strong criticism against the rationale of administrative law. Scholars of the latter responded to this criticism by

studying administrative processes of policy-implementation through the lens of the new science of administration, thereby integrating political questions to their juridical edifice. In other words, French administrative law scholars refuted the dichotomy to prevent political science from entering Public Administration's stage.

Comparing the French and the U.S. controversies may provide evidence for the statement of David Rosenbloom, Rosemary O'Leary, and Joshua Chanin (2010, p. 4) that "other countries have found it easier to rewrite constitutions and to reconfigure governments in order to accommodate their dependency on modern, technocratic public administration." Our study suggests that French scholars were in the position to integrate legitimate administration with efficient administration. The tension between legitimacy and efficiency is captured in the risk that the legislature and the judiciary may not exert sufficient control over the administration, while too much legislative micromanagement and judicial intervention may weaken the administration's capacity to deliver public services (Bumgarner & Newswander, 2009, p. 191; Rosenbloom, 2000, p. 45). In France, public administration was largely regarded as a self-regulating system, which implies considerable room for administrative discretion in policy making. While this was supposed to make administration efficient, its legitimacy was believed to stem from the broad acceptance of the Council of State as enlightened administrative elite. The tension between legitimate and effective administration could thus be resolved within the same constitutional branch, namely the executive. In contrast, our inquiry into the U.S. case suggests that efficient administration was increasingly seen to come at the expense of legitimate administration. After World War II, the American focus shifted from efficient policy implementation to more democratic participation in, and legislative and judicial control over, administrative decision making.

The question of how to strike the balance between efficient and legitimate administration remains essential for current administrative theory and practice. As Johan Olsen (2006, p. 7) puts it, administrative scholars and practitioners continue to "to hold different and changing—

not coherent and stable—concepts of ‘good administration’. Each concern is a possible source of legitimacy as well as criticism.” Depending on how we approach the question of what constitutes good administration, we may stress different core values and endorse different organizational structures and procedures (Rosenbloom 1983). When infusing administration with executive values (e.g. efficiency and effectiveness), it may be tempting to leave the actual business of administration to civil servants. However, in view of the unrealistic notion of public administration as a dutiful and politically neutral servant, accountability and responsibility for public service delivery have to stem from within the administration. Consistent with the post-war intellectual discourse in France, high-echelon civil servants may then have to serve as ‘enlightened elite’ who are purposeful, creative, and inclined to act. They may be expected to satisfy claims of both efficiency and legitimacy, because they are professional experts who at the same time share such a strong sense of state that they incarnate the public good.

From a traditional American point of view, such ‘French type’ civil servants may be viewed as a “leaders of a new type, organically part of the whole system rather than outside it” (Stoker, 2006, p. 52). In the reverse conclusion, they may be viewed as “platonic guardians and arbiters of the public interest”, which amounts to a “fundamentally non-democratic notion” of public administration (Rhodes und Wanna, 2007, p. 412). Then, representative democracy becomes the administration’s source of legitimacy, which has “the flexibility to balance different interests and develop policies to meet shifting circumstances” (Stoker, 2006, p. 44). Public administration should then be organized around legislative values (e.g. representativeness, responsiveness, and accountability), as the post-war American discourse suggests (Rosenbloom, 1983, 221). The potential downside of more political participation and citizen inclusion is that organizational structures may come “to resemble a political party platform that promises something to almost everyone without establishing clear priorities for resolving conflicts among them” (Rosenbloom 1983, 222). Therefore, administrative law

remains an important source of conflict resolution between the state and society. By infusing administration with judicial values (e.g. due process, the promotion of the rule of law, and the protection of individual rights), the institutions entrusted with enforcing the law act as guardians of the balance between private and public interests.

According to Dwight Waldo (1987, p. 91), "nothing is more central in thinking about public administration than the nature and interrelations of politics and administration." We have seen that two different terms, that is politics and administration, ideal-typically denote two different governmental tasks, processes, activities, and groups of actors. The dichotomy between politics and administration implies that the two elements mutually exclude each other as opposites or negations. In that sense, "administration is equaled to not-politics" (Rutgers, 2001b, p. 6). However, as the historical comparison of the French and the U.S. post-war controversies on the relationship between politics and administration, and the latter's role within the constitutional order of the state may have shown, the issue at hand is tricky. Investigating disciplinary boundaries such as those between scientific management, Public Administration, political science, and administrative law as well as comparing their inherent and interrelated dilemmas in each country turns out to be helpful in making sense of the historical evolution of the dichotomy's polysemous meaning.

On the whole, our comparison of the French and the U.S. controversies on the appropriate position of the administration within the constitutional order of the state contributes to our current understanding of what constitutes core values for administrative theory and practice (e.g. Beck Jørgensen & Rutgers, 2015; Bumgarner & Newswander, 2009). The comparison illustrates that configurations of core values partly represent variations in the equilibrium between executive, legislative, and judicial values, which figure more or less prominently in managerial, political, and juridical approaches to public administration. The normative identity of public administration and its relationship to politics depends largely on whether the emphasis is laid on its legitimacy by efficiency (managerial approach), its

legitimacy by accountability (political approach), or its legitimacy by legality (juridical approach). The key question of what good administration is depends largely on its spatiotemporal context. If this context is disregarded, understanding remains fragmentary at best, if not misleading.

Concluding Remarks on the Empirical Accuracy of Administrative Traditions

The relationship of the post-World War II discussion on the politics-administration dichotomy in the U.S. and France to a more fundamental discourse about the separation of powers has been discussed. The comparison has brought two different rationales for rejecting the dichotomy to light—a bottom-up vs. a top-down approach. While in the U.S., scientific management's dichotomous understanding of politics and administration was criticized to argue in favor of more democratic participation, a strengthened legislature, and increased judicial control, French scholars of administrative law attributed political functions to the 'enlightened' administrative elite to reinforce the state's executive power. In France, the Council of State in particular was regarded as the incarnation of the general interest, and was thus considered to be the democratic safeguard against governmental abuse of power. In that respect, French notions of the state and democracy differ from American ideas of the same. While French members of the administrative elite were considered guardians of the general interest, for U.S. scholars after World War II, neither the 'enlightened' administrative elite nor the general interest were realistic concepts. Instead, democracy was viewed as a result of the formulation of the pluralistic interests of American society, which had to be infused with constitutional values and translated into administrative practice against the checks and balances of legislative influence and judicial review.

Do these findings substantiate the notion of intellectual traditions in the comparative historical study of public administration? On one hand, the examination of the French case reflects administrative scholars' long-standing views on a strong state and a strong executive

with a strong administration. This corroborates the Continental European 'stateness' narrative, according to which the state has always been "the centerpiece, around which most conflicts were fought" (Stillman, 1997, p. 334). However, in spite of this emphasis on a strong administration, the importance of the value of legitimacy should not be overlooked: legitimacy lies at the heart of the French constitutional system, although it stems from the executive branch, in general, and the enlightened administrative elite, in particular.

On the other hand, the notion of American 'statelessness' has to be put into perspective in two respects: First, it does generally not apply to current empirical knowledge. Brian Balogh (2009, p. 379) points out that in the 19th century already, the U.S. did not govern less than its European "industrialized counterparts," but it may have governed "less visibly," for instance, by promoting "partnerships with nongovernmental partners instead of more overt, bureaucratic and visible interventions into the political economy." Towards the end of the 19th century, the government started to play a more visible role in the U.S. economy and society and the infrastructural power of the federal state grew extensively throughout the 20th century. Secondly, the notion of 'statelessness' does neither apply to normative ideas about good administration in times of progressive reform and scientific management, when the state was seen as the solution, rather than the problem. However, it has been argued that it is the traditional American anti-despotic penchant for balancing powers that we may have in mind when talking of 'statelessness' or, less absolutely, 'limited government'. The narrative of 'limited government' appears to be consistent with the U.S. academic discourse on the politics-administration dichotomy after World War II. The balance of powers, rather than their separation, was underscored, more weight was laid on the legislative side of this balance, public responsibility was mainly assigned to elected officials, and the interactive relationship between political institutions and the citizens was emphasized (Rutgers, 2001a, p. 230).

From a history of ideas perspective, the present study suggests that traditional U.S. and French logics of interpretation are aligned in varying degrees with the narratives of 'limited

government' and 'stateness' respectively. The study may have illustrated that taking a comparative perspective contributes to filling the gap between the self-perception of scholarly disciplines (i.e. Public Administration) and empirical reality (i.e. public administration). Arguably, understanding different intellectual traditions and examining their empirical constraints contributes much to the historical sense-generation of Public Administration.

Footnotes

[1]Upper case letters are used to refer to the academic discipline 'Public Administration' and lower case letters to refer to the practice 'public administration'.

[2]This is not to say that an organic notion of the state cannot be found in American literature. For instance, 'the organic state' features prominently in the works of Woodrow Wilson and Frank J. Goodnow, who were to a considerable extent inspired by Hegelian state theory (X, 2013).

[3]For the sake of historical accuracy, it should be noted that Pendleton Herring (1936) had delivered an (implicit) challenge to the dichotomy well before World War II. Addressing the problems of increasing administrative discretion in specifying laws adopted by legislatures, he argued that public administration should express the public interest in greater detail. Herring (1936, p. 7) stated, for instance, "Upon the shoulders of the bureaucrat has been placed in large part the burden of reconciling group differences and making effective and workable the economic and social compromises arrived at through the legislative process. Thus Congress passes a statute setting forth a general principle. The details must be filled in by supplemental regulation. The bureaucrat is left to decide as to the conditions that necessitate the law's application. He is in a better position than the legislator to perform these duties."

[4]All translations from French sources are the authors' own.

[5]During the first half of the 20th century, the politics-administration dichotomy was generally

upheld by the judiciary, as it largely viewed public administration as "a mere transition belt for implementing legislative directives in particular cases" (Stewart, 1975, p. 1675).

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