

Review - GORDILLO, Agustín, *La administración paralela. El parasistema jurídico administrativo* [The parallel administration, the legal-administrative parasystem], 1st. edition, Madrid, Cívitas, 1982, reprint, Madrid, Cívitas, 1997, 2nd. edition, Buenos Aires, FDA, 2012.

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### Abstract

Professor GORDILLO presented this work several years ago, yet the current situation in which respect the parallel public administration in Argentina is still the same. Indeed, this review intends to shade some light on the subject of this book. As far as the objective targeted by the author, he suggests the existence of a parallel administration and proposes mechanisms to overcome it. His methods vary from sociology, anthropology and economy to administrative law and administrative sciences. Finally, his findings are related to the lack of public participation in the decision-making process within public administration.

**Keywords:** Public administration, Administrative Law, Administrative Science, Argentina, Transparency

### 1. Introduction

Professor GORDILLO <sup>(1)</sup> presented this work several years ago, yet its topicality remains unchanged. It is not a work that fully systematizes the parallel mechanisms that operate on the formal Administration – what by definition belongs to the occult cannot be systematized – but it diagnoses a phenomenon of the existence of an administrative legal parasystem <sup>(2)</sup> while offering proposals to overcome it <sup>(3)</sup>.

### 2. The Diagnosis

In societies such as Argentina, the formally established Public Administration is found in such a framework that a parallel administration acts on it in a parasitic manner, weakening and corroding it. This real para-administration owes its existence to various causes <sup>(2.1)</sup> that determine its actions <sup>(2.2)</sup>.

#### 2.1 The Existence of a Parallel Administration

Parallel administration is found in a context of all sorts of parallel social practices. Thus, in Argentina there is a policy and a parallel policy, an economy and a parallel economy, a transit law and a parallel transit law, a tax system and a parallel tax system, etc. Argentines have a true parallel mind product of the duplication of systems in which they must function.

Agustín GORDILLO shows it well and crudely the schizophrenia that gave rise, in a dark past, to the dictatorships that he himself suffered. In effect, they invoked democratic values to prevent the majority party from gaining power. Under the pretext that the majority party was immature, populist or demagogic, they forgot that in democracy one can only participate as a minority when such is the electoral situation. But that is not the worst. The most serious thing is that for a long time we Argentines were fresh fodder for whatever authoritarian experience wishing to install among us in the name of defending the values that were just being cut off (GORDILLO, A.: 2012).

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<sup>1</sup> Agustín GORDILLO is far from being unknown. Professor Emeritus of the University of Buenos Aires, he was a judge of the administrative tribunals of the ILO, the IMF, the IDB, the UN and the World Bank. He is the author of the *Treatise of Administrative Law*, a reference work on the subject, which presents a true portrait of Argentine Administrative Law.

This open systematic hypocrisy has its roots throughout the law as a whole. For example, in family law, there was always the honest gentleman who opposed divorce and had a mistress; or the exemplary citizen who is a monument to evasion and then complains about the fiscal deficit, etc. We then conclude that there is a parallel morality among us.

Agustín GORDILLO is not unaware that the parallel administration cannot be reduced – eliminating it entirely would be impossible – by imposing harsher sanctions. On the one hand, because the systematic sanction already exists but its use is different from that declared in the texts and, on the other, because the chaining of the system could result in the severity not having the necessary consensus. The severity should be in fact what the population perceives as appropriate (BROADBENT, G.:2009).

Now we should examine how this parallel administration works.

### *2.2 The Actions of the Parallel Administration*

We have insinuated that there is a law and a para-law in Argentina. This duality means that we are faced with a formal, written law, etc. that almost no one complies in its entirety and against which many times there are those who even feel the duty to violate. In the administrative sphere, the regulations and norms that frame the actions of the bureaucracy frequently emanate from officials acting in the shadows of an amorphous Administration far from the public and forming a normative tangle that almost nobody knows (GORDILLO, A.: 2013).

Now, since this written law has exaggerated its sanctions while it has hypertrophied its distance from the public, it ends up being a law that is only respected by the catones, the toughest members of society, those who do not know how to understand or forgive and who do not realize that they are complying with norms that are there, in part, for their widespread violation. These perfect and submissive beings are actually the communicating vessel between the system and the para-system. We see then not only that the law is partially fulfilled but, in reality, among us, not all the law is designed for its systematic application (GLEDON, M. A., WALLACE GORDON, M., and OSAKWE, Ch.:1985).

What happens to the globally unfulfilled systematic sanctions? Very simply, they act as a reservoir to sanction those who rise up against the para-system. Those who denounce the parallel system are not sanctioned through the para-system but through the system that, too rich in sanctions, will find a way to punish the offender of the parallel system. This is how Mr. GORDILLO describes it: "For my friends, justice, for my enemies, the law." (GORDILLO, A.: 2012)

This para-administration has obvious consequences in a country where corruption is endemic, where the administration makes an excessive use of its power and where citizen control is radically diminished (SCHWARTZ, B.: 1976). Furthermore, state action is conceived and based on the existence of this parallel administration in such a way that there are groups that consider its existence as unavoidable. Acting accordingly, these groups use informal channels as a regular practice (RIVERO, J. and WALINE, J.: 1996). This state of affairs described by our author allows him to make his proposal.

## **3. The Proposal**

What Agustín GORDILLO proposes can be included in (3.1) more participation and (3.2) more publicity.

### *3.1 More participation*

Evidently, the problem lies for Agustín GORDILLO in the lack of participation of the citizens in the formation of the administrative will. All the state of the situation that we describe is located in a framework in which the distance from the public is the backdrop. The administrative decision must be made in the light of day and with the necessary critical citizen support (BREYER, S., STEWART, W. and SUNSTEIN, C.: 2002). It is this consensus that would allow progress towards less dualistic practices. It is this participation that can help to reduce the distance between written Argentine administrative law (system) and the real way of acting of the administration (para-system) (ELLIOT, M. and THOMAS, R.: 2013).

What sociologists of law often wonder about is the effectiveness of law. What Agustín GORDILLO wonders is how to make Argentine administrative law less ineffective. From all evidence, the parallel administration is a bad thing not only because it is partly ungraspable and unpredictable but because it corrodes all state actions. This system-for-system oscillation favors the establishment of groups of reciprocal favors between officials and contractors, between officials and friends of the official power, etc (CHEVALLIER, J.: 2013). Agustín GORDILLO not only advocates for more participation but also for more publicity.

### *3.2 More Publicity*

In his long career, Professor GORDILLO always advocated greater publicity. It was not in vain that he was in charge of the public hearings course at the University of Buenos Aires. It is this publicity plus the aforementioned participation that, jointly, could counteract this imprint of our underdevelopment.

I find this proposal in tune with the latest developments in democratic theory that focus on what is called deliberative democracy and that considers democracy in its procedural dimension, that is, as an inclusive process of discussion in decision-making. This vision of democracy judges a decision as acceptable after all those potentially affected by it were able to express their voice and point of view in a horizontal context. The same is true of the parallel administration that could be significantly diminished, globally, thanks to a better democracy (HABERMAS, J.:1996).

Only words of gratitude remain for me to say to Professor Agustín GORDILLO for putting at our disposal the work on administrative sciences adapted to the context of Argentine administrative law, where the only question is not that of the submission of power to law, but rather that of bringing a little closer administrative practice to a lesser indifference to the law.

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