

A revolution in administration? The birth of imperial administrative science (1800–1815)

Igor Moullier, TRANSLATION BY **Joan Johnson**

IN **ANNALES HISTORIQUES DE LA RÉVOLUTION FRANÇAISE 2017/3 No 389**, PAGES 139 TO 160
PUBLISHER **ARMAND COLIN**

ISSN 0003-4436

ISBN 9782200930974

DOI 10.3917/ahrf.389.0139

Uploaded: 10/11/2017

Article available online at

<https://shs.cairn.info/journal-Annales-historiques-de-la-revolution-francaise-2017-3-page-139?lang=en>



Discover the contents of this issue, follow the journal by email, subscribe...
Scan this QR code to access the page for this issue on Cairn.info.



Electronic distribution Cairn.info for Armand Colin.

You are authorized to reproduce this article within the limits of the terms of use of Cairn.info or, where applicable, the terms and conditions of the license subscribed to by your institution. Details and conditions can be found at cairn.info/copyright.

Unless otherwise provided by law, the digital use of these resources for educational purposes is subject to authorization by the Publisher or, where applicable, by the collective management organization authorized for this purpose. This is particularly the case in France with the CFC, which is the approved organization in this area.



A REVOLUTION IN ADMINISTRATION? THE BIRTH OF IMPERIAL ADMINISTRATIVE SCIENCE (1800-1815)

Igor MOULLIER

The period of the Consulate and the Empire was marked by the appearance of the first administrative codes, by the first syntheses which attempted to determine the principles of administrative science and administrative law. Their authors - Bonnin, Fleurigeon and Portiez de l'Oise - displayed an awareness that a new governmental and administrative order was being established in France. By comparing the principles drawn from these theoretical writings with the actual practice of the Imperial period, we can see how the administration was defined and legitimised in its new powers.

Keywords : Administration, Consulate, Empire, Administrative Science.

Understanding the concept of administration and the realities that it might have encompassed depends to a great extent on our own way of looking at it and, in particular, the models in force in political and institutional history. Vincent Wright pointed out that behind an institutional history describing France as a country endowed with a Napoleonic administration was a practice of authority made up of convoluted regulations, traditions and unspoken customs, a non-standardised technocratic management¹. As the central power in the everyday running of the State, the administration had not yet been given any status or real definition. The period of the Consulate and the Empire was marked in this respect by

(1) Vincent WRIGHT, *The government and politics of France*, London, Hutchinson, 1978.

the appearance of the first administrative codes (Fleurigeon²), by the first overviews that attempted to set out the principles of administrative science (Bonnin, Lalouette³) and administrative law (Portiez de l'Oise⁴), as well as by compendiums of case law (Locré, Sirey⁵) which indicated awareness that a new order of government and administration was being established in France. Article 44 of the Constitution of Year VIII clearly expressed the autonomy acquired by the executive power: "The government drafts the laws and makes the regulations to guarantee their execution." The assertion of a broad regulatory power created a space that was not in the hands of the legislative power, and was only regulated by the Council of State. The creation of the administrative litigation section of the Council of State only took place in 1806, and it was slow to assert itself, leaving ministers with space for intervention. The birth of the litigation section was justified by Napoleon in March 1806: "I want to set up a body that is semi-administrative and semi-judicial, which will govern the use of the portion of arbitration necessary in the administration of the State"⁶. Those seeking justice could now directly approach the Council and had the possibility of appeal. However, this possibility was limited by the lack of publicity given to this new competence of the Council of State until 1815. Maurice Hauriou also defined the 1800-1815 period as that of the "secret preparation" of administrative law⁷, comparing the first considerations of the age on administrative law to the prehistory of a discipline of which Hauriou, together with Léon Duguit, was one of the founding fathers.

Nonetheless, the search for principles likely to guide relations between the law and the administration had been going on right from the start of the Consulate. In his report on public education, Chaptal had already noted: "The study of the laws, both necessary and neglected today,

(2) Rémi FLEURIGEON, *Manuel administratif ou recueil par ordre de matières de toutes les dispositions des lois nouvelles et anciennes encore en vigueur jusqu'en germinal an 9*, Paris, published by Rondonneau, at the dépôt des lois, Year IX.

(3) Charles-Jean-Baptiste BONNIN, *Principes d'administration publique*, Paris, Clément, 1808; Claude-Joseph LALOUETTE, *Eléments d'administration pratique*, Paris, Lenormant, 1812.

(4) Louis-François PORTIEZ DE L'OISE, *Cours de législation administrative*, Paris, Garnery, 1808.

(5) Jean-Baptiste SIREY, *Recueil général des lois et des arrêts, en matière civile, criminelle, commerciale et de droit public. Depuis l'avènement de Napoléon*, Paris, France, [s.n.], 1800; Jean-Guillaume LOCRÉ, *La Législation française ou Recueil des lois, des règlements d'administration et des arrêts généraux*, Paris, Impr. de la République, 1800.

(6) Grégoire BIGOT, *Introduction historique au droit administratif depuis 1789*, Paris, PUF, 2002, p. 52.

(7) Maurice HAURIOU, *De la formation du droit administratif français depuis l'an VIII*, Paris, Berger-Levrault, 1893.

requires prompt and strict organisation⁸”. A clerk in the 1st division of the Ministry, Fleurigeon, applied himself to writing a guide to legislation intended for administrators: the *Administrative manual or compendium by subject order of all provisions of the new laws and old ones still in force in Germinal Year 9*, which appeared at the bookshop owned by Rondonneau, a former clerk at the Ministry of Justice, who had himself compiled a collection of laws that was purchased by the Secretariat of State in Germinal Year XI. The Consulate was a period of rebirth of legal and jurisprudence studies, with the creation of two private societies, the *Académie de Législation* and the *Lycée de Jurisprudence*, prior to the restoration of the law schools by the law of 22 Ventôse Year XII. While this creation was taking place, the juriconsult Portiez was given responsibility for the civil law course in its relations with the public administration. He drafted a *Course in administrative legislation* from this, which was published in 1808. Concern for interpreting and standardising administrative legislation also guided the attitude of the Ministry of the Interior. Numerous circulars reminded the prefects of the need to have a compendium of the existing laws available to them. In March 1812, a report from the Minister of the Interior recommended combining the fifteen existing case law journals into a single one (there were 7 in Paris and 8 in the departments). For Montalivet, this diversity was harmful, because as the journals were not authorised to receive the legal dispatches of orders, they gave their own version of them: “as case law is being formed by reason of judgements, they may point readers in the wrong direction”⁹. Cambacères intervened against this project, considering that it would give too much weight to journalists and would make them “the regulators of case law”. Such a project was against the very nature of case law, “which takes into account doubt and diversity”¹⁰. Any idea of an administrative code was thus blocked: the Council of State appeared as a regulatory instrument that was both efficient and flexible, and in any case sufficient in the opinion of Napoleon and his main counsellors.

(8) Cited by Henri HAYEM, « La renaissance des études juridiques en France sous le Consulat », *R.H.D.F.E.*, 1905, p. 114.

(9) AN. AF IV 1291A, report No° 218.

(10) *Ibid.*



Administrative science and social sciences in the reorganisation of knowledge

The unfinished status of administrative litigation left both a wide margin for manoeuvre for the imperial power, and also an intellectual space for thinking about the role of the administration. Several authors rushed down this road: the main ones were Fleurigeon, Bonnin, Portiez de l'Oise and Lalouette. While they have mainly been studied from a genealogical point of view, as precursors of administrative science or administrative law, they should not as a result be considered as producing specialist works written in isolation. Fleurigeon had a long career in the offices of the Ministry of the Interior responsible for administration of the communes, Portiez was a former orator, Lalouette was sub-prefect of Bayeux and deputy of the Calvados in 1811. Bonnin, in his *Principes*, cites and thanks numerous holders of political office, such as the prefect of the Seine, Frochot, and also Pastoret, Lanjuinais, Lebrun, Cretet and Fourcroy. The debate about the forms to be given to administrative power had undergone a rebirth under the Directory, as demonstrated by M. Verpeaux¹¹. Roederer was one of the participants in this debate. In his *Cours d'organisation sociale* in 1793, he had emphasised the internal organisation of power, highlighting that the debate about a monarchical or republican regime did not exhaust the question of government: "the advantages and disadvantages of a government are attached not to the person holding the supreme authority, but to the ministers who exercise it, and therefore there is nothing to prevent the State from being well-governed by a woman or a child provided that the men who are appointed to the government are also capable of running matters"¹². He intervened again as Counsellor of State in the debates in Pluviôse Year VIII, recalling the principles of operation of the administration:

“The administration itself consists of three things:

- 1 The agency for transmission of the laws to the people, and complaints from the people to the Government; in other words, the agency for two-way communication between the public will and private interests;
- 2 Direct action on matters and individuals, in all sections placed under the immediate authority of the administrators;

(11) Michel VERPEAUX, *La naissance du pouvoir réglementaire 1789-1799*, Puf, 1991.

(12) Pierre-Louis ROEDERER, *Œuvres*, Paris, Didot, 1858, T.VIII, p. 353.

3 Finally, action in the sections of administration entrusted to subordinates"¹³.

One of the issues for the theoretical publications devoted to the administration was that of integration in a field dominated by the moral and political sciences' model¹⁴. Numerous disciplines or bodies of knowledge were seeking to become structured and be recognised, within the framework designed by the reorganisation of the Institute. Charles His, a writer for *Le Moniteur* and then a clerk in the administration of libraries, under the Ministry of the Interior, wrote his *Théorie du monde politique* in 1806¹⁵. The political economy introduced by Jean-Baptiste Say was part of this same intellectual movement. For Say, "a science can only make genuine progress when we have managed to rightly determine the field where its research can be extended and the purpose that it should set itself; otherwise we pick up here and there a small number of truths without knowing how they are connected, and a lot of errors without being able to discover their falseness". Say was trying to demonstrate that politics alone could not represent all the social sciences and that new knowledge had to emerge: "For many years we have confused *Politics* per se, the science of organisation of society, with *Political economy*, which teaches how the wealth that meets the needs of society is produced, distributed and consumed"¹⁶. However, economics and the production of wealth were, for Say, independent of the form of government: "Under all forms of government, a state may prosper, if it is correctly administered". This stance corresponded to the depoliticisation sought by the Consulate regime: the time of parties and factions was to be swept away by the reconstruction of national greatness and the guidance of economic resources towards industrial production to take up the challenge presented by the English. But, in doing so, Say contributed to highlighting the importance of a new art of governance, the administration.

(13) *Ibid.*, p. 99.

(14) Julien VINCENT, "Les « sciences morales » : de la gloire à l'oubli ?", *La revue pour l'histoire du CNRS* [Online], 18 | 2007, published online on 3 October 2009, retrieved on 20 February 2017. URL: <http://histoire-cnrs.revues.org/4551>, Jean-Luc CHAPPEY, « Héritages républicains et résistances à « l'organisation impériale des savoirs » », *Annales historiques de la Révolution française*, 4, December 2006, No. 346, p. 97-120 ; Brian HEAD, "The origins of "la science sociale" in France, 1770-1800", *Australian Journal of French Studies*, 1982, 19, p. 115-132.

(15) Charles His, *Théorie du monde politique ou de la science de gouvernement considérée comme science exacte*, Paris, Schoell, 1806.

(16) Jean-Baptiste SAY, *Traité d'économie politique*, Paris, Deterville, 1803, p. III.



A science gripped by its elements

Defining administration as an object of science therefore involved multiple issues: institutional, political and cultural. Presenting the administration as an object of administrative science could make it possible to talk about a political object by nature, by hiding behind the framework of scientific literature. It was a complicated enterprise for a clerk at the Ministry of the Interior such as Fleurigeon. The work by Fleurigeon is presented as a compilation of laws and decrees, arranged by subject, these subjects then being classified in alphabetical order, the purpose of which was to respond to the complexity of the legislation: "The uniformity of execution that is essential, because it thereby constitutes the unity of the republican regime, under which the people of France have sworn to live, was what particularly decided the author of this work to undertake it"¹⁷. The author clearly based the flow of his design of the work on his ministerial experience in the administrative office. He wished to respond to the everyday doubts of administrators, to put a stop to differences in interpretation by offering: "a compilation of comparisons and observations which undoubtedly needed more time and more talent to have been dedicated to their classification and their drafting". Fleurigeon's *Manuel administratif*, which took the title *Code administratif* when it was reprinted in 1806, with the same content, therefore did not offer any theorisation and merely presented a compendium of administrative matters, classified alphabetically.

Claude Lalouette (1749-1829), sub-prefect of Bayeux and deputy for the Calvados in 1811, composed his *Eléments d'administration pratique* in 1812. The work was presented as a practical compendium, containing the "Objects of practical administration" in 8 chapters which summarised, in the form of tables, the main laws passed since the Revolutionary period, and the compendiums where they could be found¹⁸. However, Lalouette began his book with an introduction explaining that administration was a science whose elements were found in the knowledge of its objects, which therefore had to be subject to ordered classification. Lalouette based this on a descriptive conception of science and set himself the goal of defining "the words that express the most general ideas and the most important

(17) Rémi FLEURIGEON, *op. cit.*, vol.I, introduction.

(18) 1) constitution of the empire 2) financial administration 3) military administration 4) maritime administration 5) departmental administration 6) judicial administration 7) religious administration 8) miscellaneous subjects of administration: general policy, education, agriculture, trade, factories and public works.

processes of the administration”¹⁹ in the first part, which presents the principles and terminology of administration. Lalouette’s *Éléments* thus formed less of a dictionary and more of a glossary, powered by the idea that the administration first and foremost consisted of a language intended for a specific type of action: “It is not enough for the administrator to have the mind and knowledge in all that applies to a good education. He should also have a feel for administration; he should know the mechanism through which it works; he should speak its language and follow its style”²⁰. The glossary was mainly that of office work: “Order is at the core of administration. Through it the administrator settles and monitors everything”²¹. Lalouette thus listed seven types of registers: order, minutes, directories, document registers, logs, ledgers and special registers, each corresponding to types of action and specific forms of archiving. In his way, Lalouette shared the convictions of Condillac and the Ideologues that a well-made science had to start with an exact language. This dimension was reinforced by the new title given to the reprint of *Eléments* en 1817, as *Classification des lois administratives*.

The legal expert Portiez de l’Oise, responsible for teaching administrative law, also made use of the scientific model:

“Scholars have managed in the exact sciences to form a body of doctrine of the most common daily practices. The most common ideas, coordinated into a general system for physics, mechanics and geometry, have been enlarged by their approximations and connections. Arts and skills all have their theory nowadays. Should we have despaired of realising this great and profound thinking in the social world? Like the physical world, the social world is subject to fixed rules, to definite principles, recorded and confirmed by centuries of experience. Its organic parts are regulated by positive laws”.

Knowledge of civil and administrative laws therefore had to be an object of science just like the others: the desire for knowledge and to constantly improve his living conditions should lead man, according to Portiez, to embrace the study of administrative laws. Political circumstances provided a favourable moment: “The detailed actions of the administration are marked alongside deep rationality and the general good, as the acts of

(19) Claude-Joseph LALOUETTE, *Classification des lois administratives*, Paris, Bavoux, 1817, p. 2-3.

(20) Claude-Joseph LALOUETTE, *Elements...*, *op. cit.*, p. 7.

(21) *Ibid.*, p. 10.



the higher administration are imbued with the genius of the great man who directs the administration of France”²².

Charles-Jean Bonnin continued this effort by covering the varying degrees of formalisation: his first writing dedicated to administration initially concerned codification (*De l'importance et de la nécessité d'un code administratif*, Paris, Garnery, 1808) before attempting to set the principles (*Principes d'administration publique*, Paris, Clément, 1808) and asserting the scientific dimension in the reissue of his works under the Restoration: “administration is a science deduced from natural elements and based on universal and stable principles. Not to recognise administration as a science would be to deprive it of elements taken from nature, and steadiness of principles, without which it will nonetheless always remain abandoned to indecision, arbitrariness and routine”²³. Bonnin highlighted the coincidence of the reorganisation of knowledge with that of power: “While, since the Revolution, a lot of fundamental principles have been set up in administration, while we particularly find in the consular and imperial laws a multitude of very wise provisions on the matter, such confusion still reigns there resulting from the amalgamation of old laws with new, that this reason alone makes the drafting of an Administrative Code essential”²⁴. The Revolution had opened up a new era for administration, but without grasping all its consequences: “The Constituent Assembly was the first to realise what administration is, and attempted to organise it on fixed and invariable foundations; but its work would have been lost in France’s political troubles, if the great man to whom the State owes its wise legislation had not saved it from the ruins in order to perfect it”²⁵. For Bonnin, the profound upheavals experienced by French society since the Revolution: - the rise of science, the taste for the positive, the development of industry and the arts, and the enthusiasm of the nation uniting against attacks from abroad - were to be understood as a phenomenon of civilisation broader than mere political change. France was the first nation to have recognised the importance of these principles: “The first one to claim the benefit of laws and a stable administration, these great social benefits and the

(22) Louis-François PORTIEZ DE L’OISE, *Cours de législation administrative*, op. cit., p. XXVII.

(23) Charles-Jean-Baptiste BONNIN, *Abrégé des principes d'administration*, Paris, Costes, 1829, p. XXII.

(24) Charles-Jean-Baptiste BONNIN, *De l'importance et de la nécessité d'un code administratif*, Paris, Garnery, 1808, p.4

(25) *Ibid.*, p. 29.

guarantees of public liberty and individual security, the absence of which had caused all misfortunes since the start of civilisation"²⁶.

Political stabilisation was one of the first conditions for the appearance of administrative science, while social sciences were its complement: "But these times are no longer times when hypothetical opinions can prevail over reason and evidence in matters of government and administration. It is no longer by empty theories, by systems that are more ingenious than real, more shiny than solid, that the spirit can now be satisfied"²⁷. The spirit of a system gave way to the search for positive facts. For this reason, Bonnin saw in the code the first stage of administrative science: a code bringing together the existing laws would make it possible to avoid getting lost in intellectual speculation. It would also sweep away the prejudices suffered by the administration, criticised by "these conventional and superficial minds that have so far only seen administration as bureaucracy or the arbitrariness of authority"²⁸. Administrative science was to form part of the field of social sciences, as the branch studying relations between society and its members, seen as the people. The same approach as the one that the writers of the civil code had established in the order of the family could be found in that of the administration: "The administrative laws, in fact, did not consider citizens as in the family and as individuals in the State, nor in the exercise of their political rights, but as members of society in their public relations, these relations being necessary for the very maintenance of society"²⁹. Bonnin even refuted the idea that the family was the first form of organisation. Man had always lived in society and the family did not exist without recognition of the State. The principles of natural law, according to Bonnin, were the source of political and administrative organisation: "the protection of individuals was always the purpose of social union, and (...) ultimately, this protection was the cause of the institution of government and administration"³⁰. The failure of political philosophy was due, according to Bonnin, to a lack of precision in the terminology. Montesquieu was thus criticised for having confused "the State and the government...the nation and the public authority"³¹. Bonnin proposed a new series of definitions. The people constituted the assembly of citizens

(26) Charles-Jean-Baptiste BONNIN, *Principes d'administration publique*, Paris, Renaudière, 1812 (3rd ed.), vol.1, p. 24.

(27) *Ibid.*, t.1, p. III.

(28) *Ibid.*, p. XV.

(29) *Ibid.*, p. vii.

(30) *Ibid.*, p. 79.

(31) *Ibid.*, p. iv.



living under the same laws, as a Nation, a people considered in comparison with others, while the State represented the political organisation of a people. The State was the political principle and the government its embodiment. The effect of its principles was easy to follow according to Bonnin:

"We would not be able to devise the State without social conventions, and consequently without agents subordinated to the chief, who execute, in his name and under his supervision, the conventions that govern it; because we would not be able to devise the management of public matters without civil servants installed as administrators in each locality, and also responsible for linking the relations of each person to society itself, through the action of the laws or regulations that are established in it"³².

Within the government, it was crucial to correctly distinguish between government and administration. The government provided the impetus and the administration put it into practice.

"The State is the political establishment of a nation; the Government is the general public authority; the Administration is the local public authority. The people make up the State; the Government and the administration, on the other hand, are the principles of existence, but not the body they give life to. The State exists due to the sole fact of citizens coming together; the Government and administration are social institutions. The body should therefore not be confused with the will that makes it move"³³.

The distinction between government and administration put forward by Bonnin was already to be found in the volume of the *Encyclopédie méthodique* dedicated to Jurisprudence, and written by Peuchet, who defined administration as "a set of resources and agents intended to maintain a certain order in matters of rights or property"³⁴. He deduced from this the need to separate administration and government: the administration had to account to the government, which only had to do so to the sovereign. The administration was a conditional power: it could have a certain amount of latitude, but ultimately it was accountable. For Peuchet it had a subordinate role and was not presented as an essential component of the State. In the *Cours d'organisation sociale* by Roederer, the role of the administration

(32) *Ibid.*, p. 81.

(33) *Ibid.*, note 1 p. 19.

(34) *Encyclopédie méthodique*, Jurisprudence, t.IX, Paris, Panckoucke, 1789, p. 152.

was reviewed upwards. The executive power was described as being made up of two parts: government and administration.

“The government is what makes things happen, what governs the central and local, general and special administrations. The distinction that I am making here between government and administration is reduced to that of organisation and supervision or organisation and order. (...) In everyday language, we call the government the complete system of executive power, without distinguishing between the governing authority and the administrative authority”³⁵.

Bonnin, like Portiez de l’Oise, took a step further by making the administration into an autonomous authority, within the framework set by the law. The government was the expression of the national will and sovereignty, the administration was its strong arm. In the absence of any constitutional clarification or administrative code, another way existed to define the powers of the administration: that of the portrait of the ideal administrator, an approach whose importance has been demonstrated by Jacques Krynen for the formation of the “ideology of the ancient magistrature”³⁶. Thanks to his knowledge of administrative science, the administrator could move out of his subordinate position as a bureaucrat to become a fully fledged political actor: “Such is the importance of administrative science that without it we are merely following routine in the ability to manipulate matters affairs that we acquire”³⁷. Specifying the qualities of the administrator contributed to this undertaking of definition.

The image of the administrator

The figure of the judge was also the first one that Fleurigeon attempted to compare with the image of the administrator: “Nature and example make the warrior; study trains the judge; the administrator trains himself: to this natural disposition, he has to add this cheerful tact, this discernment that many years of experience can give, this enlightened reflection and this laborious patience, which can overcome all obstacles”. The Revolution had increased the anxiety of civil servants: their status remained uncertain, subject to the will of the political authorities, and their action was now

(35) Pierre-Louis ROEDERER, *Cours d’organisation sociale in Œuvres, op. cit.*, t. VII, p. 284.

(36) Jacques KRYNEN, *L’idéologie de la magistrature ancienne. L’État de justice France XIII^e-XX^e siècle* t.1, Paris, Gallimard, 2009.

(37) Charles-Jean-Baptiste BONNIN, *Principes...*, *op. cit.*, p. XLI.



scrutinized by the public and subject to new requirements of transparency³⁸. The *pro domo* plea of Fleurigeon was a means of reversing political uncertainty for the benefit of the clerical worker: "the customs, habits, practices and the laws themselves vary infinitely, especially in times of revolution". Mechanical application was not enough. The prefects of Year VIII had to have other qualities: "he must therefore study the customs and practices each area of his department, to give orders in one, to invite and persuade in others; in short, he must be a man for all places"³⁹. The law cannot foresee everything, which is why we must also make use of the mind of the legislator to guide the administrator. For Portiez: "How can one not understand that the action required to reach one's goal must have been preceded by reflection on the part of the legislator"⁴⁰? It was thus possible to adapt to circumstances, while recognising that the principles guiding the action of the legislator were fixed.

The image of the administrator was the first factor to have an influence on public perception. This concern about image can be seen with Lalouette, who laid down the foundations of "self-regard" for the administration: "We must begin by being masters of ourselves in order to govern others." The administration should not be seen as arrogant or superior: "The man in charge of a public office almost always loses in consideration what he seeks to gain in superiority"⁴¹. One of the consequences that Lalouette drew from this was not to make demands beyond what was reasonable: "It is to compromise the administration to order what one cannot force into effect or to ban what one cannot prevent happening"⁴².

Bad prefects were quickly reported. A police report stated:

"The district of Beaupréau is quiet, but it owes this tranquillity less to the nature of its inhabitants than to a very large gendarmerie, by which it is covered and which serves it perfectly. Among the causes of disorder, we cannot help but say that many emanate from administrative neglect. The sub-prefect, M. Barré, has talents and resources, but he does not make

(38) Catherine KAWA, *Les ronds-de-cuir en Révolution. Les employés du ministère de l'Intérieur sous la Première République*, Paris, C.T.H.S, 1997, for the lack of status of civil servants and Ralph KINGSTON, *Bureaucrats and bourgeois society: office politics and individual credit in France, 1789-1848*, Houndmills, Palgrave Macmillan, 2012, especially chapter 2 on "the anxiety of administrative Transparency".

(39) FLEURIGEON, *Manuel administratif...*, *op. cit.*, discours préliminaire, p. I.

(40) Louis-François PORTIEZ DE L'OISE, *Cours de législation administrative*, *op. cit.*, p. XIX.

(41) LALOUETTE, *Éléments...*, *op. cit.*, p. 8, to be read in conjunction with Philippe Bezes, « Aux origines des politiques de réforme administrative sous la Vème République : la construction du « souci de soi de l'État », *Revue française d'administration publique*, 2002, 2, p.307-325.

(42) Claude-Joseph LALOUETTE, *Éléments...*, *op. cit.*, p. 9.

enough use of them in forming public opinion. (..) He lives in Jallais, a bourg in the same district, and leaves matters in the hands of a clerk. He appears at Beaupréau only once or twice a month. How can public opinion be shaped? How can people become attached to the government when they never hear about it, or entertain only false ideas about it, are pulled in opposite directions and, finally, never see their magistrate?"⁴³

For Portiez de l'Oise, communication by prefects to the subordinate authorities was an essential element in building the image of administrative power. It should "while preserving the character of the authority that is allocated to it, moderate its expression by the observation of all the considerations which make established power appreciated in order to serve the common good (...) The only case where an imperative style can be used by the superior authority is one where the insubordination of an official who is subject to it would forcibly be reminded of the under which dependence he is placed by the constitution"⁴⁴.

This attention to detail was not anecdotal. Administrative practice confirms the importance given to the principles stated by Portiez. In Year XII, a complaint from the prefect of the Côte-d'Or indicated that the Receiver General and the Director of Indirect Taxes in the Department ended their letters with, "I have the honour of greeting you" and not, "I am with respect your servant". For the Minister of the Interior, there was nothing "mandatory" in these formulas. "I do not believe that you had the right to require from two agents placed under your supervision rather than under your orders, the explicit testimony of a respect which no precise provision requires them to express"⁴⁵. However, he wrote to the Minister of Finance asking for these officials to behave with the prefect in the same way as they did with other officials in the department.

Times changed during the Empire. On 1 August 1810, Montalivet wrote to the Emperor about a matter of etiquette. The prefect of the Tarn-et-Garonne, a councillor of state, refused to call the other prefects his colleagues, and the minister "monseigneur", offering as his excuse the fact that "for the 18 months he has been in office, he has only thought about serving Your Majesty well, and that the formulas of correspondence had not attracted his attention". For the minister "such an affectation seems

(43) Ernest D'HAUTERIVE, *La police secrète du Premier Empire. Bulletins quotidiens adressés par Fouché à l'empereur. T.I: 1804-1805*, Paris, Perrin, 1908, bulletin du 10 nivôse an XIII.

(44) Louis-François PORTIEZ DE L'OISE, *Cours de législation administrative, op. cit.*, p. 46.

(45) AN. F²I 106⁴, 5 fructidor an XII.



shameful to me”⁴⁶. He asked the Emperor to authorise him to write to the prefect to demand a letter of apology, a sign that prefectural etiquette was a politically sensitive question.

Napoleon was aware that there was a general mistrust of the prefects, as shown by his correspondence with the Minister of the Interior: “the authority of the prefects is too great; abuse more than laziness is to be feared from them. (...) you will write a circular to the prefects, to let them know that I do not want to hear of any decree being published against the municipal officers and their subordinates⁴⁷”. The Emperor was to receive numerous reports of abuse of authority, and returned to it several times in his correspondence.

The Dijon affair had been one of the cases that had caught his attention. The prefect was to swear in the new mayor of the city. He delegated a prefectural councillor to do so. The adjoint (deputy mayor) refused to receive the councillor, considering that it was up to the prefect to appear. The prefect, Riouffe, described this attitude as an act of insubordination, and demanded the dismissal of the *adjoint*, which minister Champagny approved. He proposed the measure in a report to the Emperor, but the latter did not view the affair in the same way: “The prefect had no right to appoint a commissioner to swear in the mayor; he had no right, due to a simple difficulty of finding time, to make an order and to make it public, and thus to face an honourable magistrate with the alternative of either suffering disgrace, or to creating a row”⁴⁸. The publicity given to the affair was the first fault in the eyes of Napoleon. The second was to have confused civil and military order: “Civil subordination is not blind and absolute; it admits reasoning and observation, whatever the hierarchy of authorities may be”⁴⁹. The prefect should have shown consideration to the city of Dijon.

The administration had to project an image of stability, hence some reluctance to change men too often (e.g. the dismissal of mayors). The ministry generally preferred to wait for the five-year replacement operations, and to declare dismissals only for serious and proven offences. The replacement of mayors was a sensitive operation, closely controlled by the Emperor. In April 1807, the Minister of the Interior, in a circular in which he asked the prefects for the list of mayors and *adjoints* to be replaced,

(46) AN. AF IV 1288, 1^{er} août 1810.

(47) *Correspondance de Napoléon Ier*, Paris, Plon, 1858-1870, t. 12, n° 10143, 26 avril 1806.

(48) *Ibidem.*, t. XII, n° 10143, 26 avril 1806.

(49) *Ibid.*

recalled that the operation was to be carried out with sensitivity: thanks to which, “without having recourse to the always painful route of revocation, and without harming self-esteem too much, we will exclude from the administration those men who did not fulfil the hopes that had been placed in them when they were put there”. *L'Exposé de la situation de l'Empire* in 1811 recalled: "instability destroys everything". It was referring to the debates on the prefectures, a reduction in the number of which was announced, before concluding that the organisation of the departments was "like a property matter which his Majesty will not touch at all"⁵⁰.

Bonnin stated a reason for this necessary leniency with regard to subordinates, highlighting the following with regard to relations between the ministers and the Emperor: “Obliged to rely upon them, he acts only according to their reports and most often according to their views; and if he acts badly, they are the ones who are really guilty”⁵¹. He even went as far as to suggest a re-evaluation of the role of sub-prefects. “The extent of prefectural duties, and the multiplicity of matters for which prefects are responsible, requires of them a workload and supervision that are often superhuman, in order to secure the execution of laws and the dispatch of affairs by so many secondary agents”⁵². The consequence of the magnitude of the tasks to be carried out, which was itself reflected in the length of the publications devoted to administrative science, lay in the fact that laws ran the risk of being executed more slowly, with a series of unfortunate consequences: "indifference in duty succeeds ability and zeal, the liberal conceptions of Government remain without effect, and an inevitable languor seizes upon the administration and kills it"⁵³. It was the administrative organisation itself that was at fault. For Bonnin it was necessary that the sub-prefects become complete administrators. “Then, taken out of their state of nullity, sub-prefectoral duties will be more honourable and more useful for public affairs”⁵⁴. Behind empirical observation of the materiality of administrative tasks, Bonnin thus reversed the perspective, taking an approach that has since been integrated into the organisational sciences: Chester Barnard in his theorisation of executive functions emphasises that the execution of the order depends on the goodwill of the agent and

(50) *Exposé de la situation de l'Empire présenté par son excellence le ministre de l'Intérieur*, Paris, 1811, p. 10.

(51) Charles-Jean-Baptiste BONNIN, *Principes, op. cit.*, p. 145.

(52) *Ibid.*, p. 199.

(53) *Ibid.*, p. 199.

(54) *Ibid.*, p. 200.



his understanding of the reasons⁵⁵. For his part, Niklas Luhmann has highlighted in his theory of power that it was due to a linguistic convention that power was considered to belong to an authority, while power should in reality be conceived as a relationship, in which subordinates possess the means to influence their superior⁵⁶.

The theorisation of administration as the delegation and proxy of action, while magnifying the role of the central authority, thus accorded a great deal of importance to the lower echelons. The mayor, for Bonnini, was "the first lower rung in the administrative order, and yet his duties are the most important, because he is *de facto* administrator in all cases, which could not be said of the prefect, who, on the contrary, most often has only one area to supervise"⁵⁷. It was on the mayor that the image of the administration largely depended, since he was the first, and sometimes the only, contact for citizens. His action was therefore essential: "In vain would a prefect seek to do good if the mayors do not support him. Closer to the citizens, in greater contact with them, the mayor is consequently the civil servant who can do the most to make them like authority, because he is the direct agent who communicates administrative action to the citizens"⁵⁸.

Documents dedicated to administration under the Consulate and the Empire traditionally began with a description of an administration that was both powerful and paternally beneficent. However, as Bonnini's work progresses, we see a perception of the fragility of the administration's influence. Thus, by pleading for "citizens to always be made aware of what is expected of them", he was drawing up, alongside the anticipated positive effects, a list of the risks that plainly outlined possible resistance to authority: "nothing inspires trust in the actions of the public authority and in the exercising of this authority more than frankness and honesty. On the contrary, nothing degrades the mind or debases the soul more than fear and mistrust. Instead of peaceful people naturally inclined to obey the measures we take, we now only have frightened people, but also people without commitment, without respect, and always ready to revolt"⁵⁹.

(55) Chester Irving BARNARD, *The functions of the executive*, Cambridge, Harvard University Press, 1938.

(56) Niklas LUHMANN, *Le pouvoir*, Québec, Presses universitaires de Laval, 2010.

(57) Charles-Jean-Baptiste BONNINI, *Principes, op. cit.*, p. 209.

(58) *Ibid.*, p. 213.

(59) *Ibid.*, vol.2, book VI, On administrative policy, p.3

The imperial administration's concern for itself

It is interesting to connect the theoretical or normative approach with the doctrine and practice of the administration itself. Ministers and heads of bureaux were engaged in an explanatory effort, mainly through the production of circulars. This effort led to the production of an 'internal' science of administration, an assessment of what the administration could or could not do. The activity of the Ministry of the Interior was a dual one. On the one hand, there was the desire for standardisation, an administrative efficiency that had to be like that of electric fluid, as Chaptal stated on presenting the draft bill of 28 Pluviôse Year VIII (17 February 1800). But behind this "political culture of generality", there was attention to the communication process and the receptive conditions for the administrative discourse.

The circular of 6 Floréal Year VIII (26 April 1800) from Lucien Bonaparte to the prefects recalled that: "Any idea of administration and uniformity would be destroyed if each prefect were able to take as a rule of conduct his own personal opinion on a law or on an act of government"⁶⁰. The minister issued a reproach to the prefects: that of being too talkative, and thus destroying the impression of unity and serenity that the new power wished to give: "I see with sadness that some of you, no doubt with laudable intentions, take it upon yourselves to interpret the laws, communicate with the public by means of circulars and placards, and fill the newspapers with accounts of what has been done". The prefects were asked to imitate the conduct of the government: "it produces deeds and not writings, it governs, but it does not say very much"⁶¹. Portiez de l'Oise highlighted the reasons for this attitude. The preceding periods were marked by arbitrariness (the figure of the intendant), or constant change (the revolutionary period). The new government had a different approach: "Better for laws not to exist than to leave them without execution"⁶². It made fewer laws but scrupulously applied those that existed. The principle of administrative concision was coupled with a concern for the image of the administration, and the affirmation of a principle of non-contradiction: whenever a superior authority was called upon to correct the acts of a subordinate, the image of the administration was weakened. Thus, the circular of 13 Nivôse Year IX

(60) *Recueil des lettres circulaires, instructions et autres actes émanés du ministère de l'Intérieur*, Paris, Imprimerie nationale, 1802, t.III, p. 183.

(61) *Ibidem*.

(62) Louis-François PORTIEZ DE L'OISE, *Cours de législation administrative, op. cit.*, p. xviii.



(3 January 1801) discussed the problem of prefectural orders not submitted to the government: "The higher authority is thus often reduced to the sad necessity of annulling provisions that are already being enforced"⁶³.

The tendency of public opinion to become alarmed was a second reason for controlling the writings of the administration. On 4 Pluviôse Year XI (24 January 1803), the Minister of the Interior reproached the prefect of the Seine-Inférieure for having had his administrative report printed. It contained details that should not have been made public, such as conditions in the hospitals, the dilapidation of the prisons due to a lack of resources, or even the following paragraph on the state of industry: "we are still short of thread and national industry has produced more than one work of which it can be justifiably proud, but which was woven with English thread"⁶⁴. Even though the text had only been distributed to the members of the general council, printing it increased the risk of a breach of secrecy for administrative information, and of causing uncertainty in public opinion.

In Year XIII a quarrel broke out in the department of the Dyle between the municipal council and the prefect. Sixteen members of the municipal council responded to the prefect who had criticised their management of debt. For Portalis, acting Minister of the Interior: "[they] should never have had what they call their justification printed. If they believed that they had something to complain about to the prefect, they should have appealed to the higher authority instead of making a kind of appeal to the public in a printed document. These kinds of appeal are acts of anarchy that harm the laws and good order"⁶⁵. The minister therefore sent an official letter to the prefect, intended to be acted upon. However, at the same time, he also wrote another letter to the prefect of the Dyle, intended to remain confidential, to inform him that he was also wrong in his recourse to publicity:

"most circular letters can be printed without any drawback, but those that contain reproaches or serious warnings, and can, therefore, even arouse passions, are rarely suitable for printing. Printed letters lead to printed documents, and the authority has nothing to gain from the discussions that arise between the various civil servants when the people are indiscreetly made privy to such discussions"⁶⁶.

(63) AN, F^{1a} 51².

(64) AD Seine-Maritime. F 1cV Seine-Inférieure.

(65) AN. AF IV 1052, 5 Vendémiaire Year XIII, from the Minister of the Interior to the First Consul.

(66) AN, F^{1bII} Ourthe 1, 19 Vendémiaire Year IX.

The problem arose again in 1810 when the department of the Marne was in uproar due to a circular from the prefect mentioning the measures concerning Austrian prisoners of war, even though his department was not involved. He was accused of contributing to spreading "false interpretations" and of not having distinguished "ordinary administrative measures from those requiring special circumstances, about which it is more than irrelevant to attract the attention of the public and sometimes that of the neighbouring or allied powers"⁶⁷. The idea that the administration had to be careful what it said in order to preserve the force of its pronouncements was thus imposed in various contexts. In considering the style of the administration, Portier, Bonnin and Lalouette reflected this dawning awareness⁶⁸.

Between certainty and fragility: the imperial syndrome

The application of administrative principles was also manifest at international level. The work of the imperial administrators was well known from this time onwards⁶⁹. The Empire, whether in the new departments or in the satellite kingdoms, was characterised by a desire for legislative uniformity, trust in the method of administration and the superiority of the laws, and also by taking public opinion and the local elites into account. Michael Broers recalled that the bureaucratic dimension was essential to the Napoleonic Empire, which was an "empire of the laws"⁷⁰. The return of a professional ethos, observed in soldiers⁷¹, was also manifest in magistrates and administrators. "The real revival of ancien régime is found less in institutional comparisons than in the return of a culture of

(67) *Recueil des circulaires*, op. cit., vol. X, 31 May 1810.

(68) See Robert HARIMAN, *Le pouvoir est une question de style. Rhétoriques du politique*, Paris, Klincksieck, 2009 and for an analysis of the communication policies of the Prussian administration, Stefan HAAS, *Die Kultur der Verwaltung. Die Umsetzung der preussischen Reformen 1800-1848*, Frankfurt, Campus, 2005.

(69) François ANTOINE, Jean-Pierre JESSENNE, Annie JOURDAN and Hervé LEUWERS (ed.), *L'Empire napoléonien: une expérience européenne ?*, Paris, France, A. Colin, 2013 ; Guido BRAUN, Gabriele B. CLEMENS and Lutz KLINKHAMMER (ed.), *Napoleonische Expansionspolitik: Okkupation oder Integration ?*, Berlin, De Gruyter, 2013 ; Michael BROERS, Peter HICKS and Agustín GUIMERÁ RAVINA (ed.), *The Napoleonic Empire and the new European political culture*, Basingstoke, Palgrave Macmillan, 2012 ; Aurélien LIGNEREUX, *Servir Napoléon. Policiers et gendarmes dans les départements annexés (1796-1814)*, Seyssel, Champ Vallon, 2012.

(70) Michael BROERS, "Les 'Enfants du Siècle' : An Empire of Young Professionals and the Creation of a Bureaucratic, Imperial Ethos in Napoleonic Europe", in Peter CROOKS and Timothy H. PARSONS, *Empires and bureaucracy in world history: from late antiquity to the twentieth century*, Cambridge, Cambridge University Press, 2016, p. 344-363.

(71) Alan FORREST, *Napoleon's Men. The soldiers of the Revolution and Empire*, Londres, Hambleton, 2002.



government in which the professional bureaucrat was all"⁷². The Empire presented itself as an "unwavering model" founded on the new laws. Its dual ideal of objectivity and loyalty in the service of the State was able to attract men whose personal and social interests were linked to those of the Napoleonic State in the Territory of the *inner hegemony*: Milan, Holland and Bavaria. It made it possible for ministers such as Montgelas or Melzi d'Eril to rally to Napoleon. These leaders were joined by new administrators mainly taken from among the auditors of the Council of State, and were themselves from the best French families, such as Camille de Tournon or Antoine Roederer. Confident in their civilising mission, they developed, more clearly than in France perhaps, the principles of administration, the Empire becoming, for M. Broers, the very principle of a new civilisation imposed by the administration, after the weapons had spoken. "It was less a case of an enlightened empire than empire, itself, as enlightenment"⁷³.

Could the principles of the new administrative science be transposed into the conquered countries? The example of Joseph Bonaparte's policy in Naples shows that the civil administration did not set itself the same goals in the conquered countries. Napoleon criticised his brother for wanting to impose a French-style system of administration too quickly, as witnessed by the barbs regularly aimed at Roederer, Joseph's right-hand man: "The administration of the kingdom of Naples is going very badly; my troops have not been paid and the shortfall is growing every day. Roederer is making great plans, ruining the country and not paying any money into your Treasury. This is the opinion of all Frenchmen who have visited Naples. Roederer is honest, and he has good intentions, but he has no experience. The great art lies in only doing what you should each year, but Roederer is doing in one year what should be done in ten. The subject of this observation alone ought to ruin you and make your people unhappy."⁷⁴

To Napoleon, Roederer seemed representative of the spirit of a system that was far removed from his practice of government. Napoleon's approach was marked by thinking about the time-frame, in which he made

(72) Michael BROERS, art. cit., p. 348.

(73) *Ibid.*, p. 363. For a more nuanced view of the politics of 'civilisation', see the article by Virginie MARTIN, « Éduquer, civiliser, dominer ? Le rôle de Gérard dans l'annexion de la Toscane et des états pontificaux (1808-1810) », in Carole CHRISTEN, Jean-Luc CHAPPEY and Igor MOULLIER (dir.), *Joseph-Marie de Gérard (1772-1842). Connaître et réformer la société*, Rennes, Presses Universitaires de Rennes, 2014, p. 129-142.

(74) Napoléon BONAPARTE, *Correspondance générale*, op. cit., vol. 8, No. 17181, 11 February 1808.

the distinction between the moment of conquest and that of working for peace. Napoleon reproached the new sovereigns that he had installed for positioning themselves in the second phase while the first one was not yet over. Roederer's plans to set up a sinking fund in Naples in 1807 were thus harshly criticised: "Is it right in a country that has not yet been consolidated in any way by recognition from Europe, or by peace, to plan to set up such institutions? (...) Do not issue any orders at all. Do not set up any credit institutions. These are the operations of peace. All of this should emanate from it and this peace will come. The means must be found to make men with Mr Roederer's imagination understand that timing is the great art of man, and that what should be done in 1810 cannot be done in 1807"⁷⁵. The administration of the Empire thus presented two aspects, and the slow work of disseminating administrative principles was only in its infancy in many of the conquered territories⁷⁶.

The science of administration, as viewed by Bonnin, could claim to figure among the new sciences of political and social organisation, if the division between a private sphere governed by the civil code, and a sphere of general interest guided by the State, is to be accepted. Can we go so far as to talk about the foundation of a new paradigm as S. Sawyer believes⁷⁷? For him, Bonnin responded to several of the criteria defining Kuhn's paradigm shift: the coming together of a group of investigators around common questions, and the establishment of a coherent but open system of theory, enabling others to come and enrich and develop it⁷⁸. However, as Sawyer demonstrates in his study of the municipality of Paris, the rise of municipal administrative science only took place under the July Monarchy and Bonnin did not have any direct successor. Yet Bonnin should not only be seen as a theorist. While most of his work, like that of Portiez de l'Oise, remains descriptive, we can also see the appearance, through

(75) *Ibid.*, *op cit.*, vol. 7, No. 1448, 1 March 1807.

(76) On the specific importance of language as a political factor, see Claudie PAYE, *Der französischen Sprache mächtig. Kommunikation im Spannungsfeld von Sprachen und Kulturen im Königreich Westfalen 1807-1813*, München, Oldenbourg, 2013.

(77) Stephen SAWYER, *Locating Paris. The Parisian Municipality in Revolutionary France 1789-1852*, Ph. D., University of Chicago, 2008.

(78) Thomas KUHN, *The Structure of Scientific Revolutions*, Chocago, University of Chicago Press, 1962.



certain remarks or recommendations, of a depiction of the strengths and weaknesses of the administration at that time.

Igor MOULLIER
ENS Lyon – LARHRA
igor.moullier@ens-lyon.fr