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Brief considerations on the use of consensus in Public Administration, from the perspective of the historical construction of administrative law.

Brief considerations on the use of consensus in Public Administration, from the perspective of the historical construction of Administrative Law.

Clayton Vila Nova de Lima - Master's student in Law at Veiga de Almeida University (RJ)

Summary

This article aims to discuss and offer some brief considerations on consensus-based solutions in Public Administration. The promotion of consensus-based solutions has received encouragement in the Brazilian legal system, including its application in Public Administration. One of the most discussed topics in the debate on the reform and modernization of Public Administration is the feasibility of employing consensual methods for conflict resolution by the State. It is noted that society has increasingly demanded governmental action that prioritizes a culture of dialogue, capable of taking into account the expectations of different segments of the population.

However, developing a new perspective for resolving conflicts requires overcoming old ways of understanding the interaction between the State and Citizens.

Keywords: consensus; State; Administration

Abstract

This article is intended to discuss and draw up some brief considerations on consensualism in Public Administration. The promotion of consensuality has received incentives in the Brazilian legal system, including application in the Public Administration. One of the two issues most addressed in the discussion on the reform and modernization of Public Administration is the feasibility of employing consensual methods for the resolution of conflicts by the State. Note that society increasingly demands a governmental attitude that privileges a culture of dialogue, capable of raising the expectations of two different segments of the population. Meanwhile, developing a new perspective to resolve conflicts requires overcoming old ways of understanding the interaction between the State and the Cities.

Keywords: consensuality; Status; Administration

Introduction

One of the most discussed topics when it comes to administrative reform and modernization.
Public policy refers to the possibility of using consensual methods for resolving disputes.
from the State. It is noticeable that this is an increasingly common demand from society.
the demand for state action characterized by the prestige of a culture of dialogue, which is
capable of taking into account the expectations of the various sectors of the population.

However, building a new approach to conflict resolution requires...
overcoming old ways of considering the relationship between the State and the Citizen.

In Brazil, after a long and dark period of military dictatorship, the right path was rediscovered.
of legality and democracy in the second half of the eighties and, as a result of this process, the
The country adopted a new Federal Constitution in 1988, which became known as the "Constitution
"Citizen," because it had significant participation from society in the discussions for its
drafting, as well as having incorporated into its text several provisions that promoted the guarantee of
Protection of individual and collective rights and guarantees.

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This tendency to make the Constitutional Charter a privileged instrument in the protection of Society against state arbitrariness is verified by Miranda, for whom:

> Modern Western-inspired constitutionalism is the story of the acquisition of fundamental rights. It is the story of the conquest of rights – after centuries of absolutism and, in the 20th century, in contrast to totalitarian and authoritarian political regimes of various tendencies. (MIRANDA, 2011, p. 92).

However, at the same time as it introduced principles into the domestic legal order aligned with theories on modern constitutionalism, particularly in the protection of The freedoms of citizens in the face of abuses perpetrated by the State, according to the current constitutional text. preserved instruments that allowed one to infer the supremacy of governmental interests in various situations in which there is conflict with the claims of individuals, thus moving away from The desirable balance that should characterize legal relationships; for example, we have the principles. of legality, non-disposability and supremacy of the public interest.

In fact, according to Oliveira (2018, p. 200), one of the arguments most used to justify The impossibility of agreements being made by the Public Authorities would be the prohibition brought about by observance of legality and the unavailability of public interest, which would prevent the public agent from to transact on interests defined within the legal system.

However, for a proper understanding of the subject, it is important to... Contextualization regarding the notion of public interest.

The doctrine points to the link between interest and values, according to which, each interest conveys one or more informative values, such as moral, affective, aesthetic, utilitarian, or any other values. others that are merely subjective:

> In typically private relationships involving the coordination of interests, the law treats these interests equally, respecting the presumed equality of the parties' will so that they may exercise their autonomy with respect to their respective interests, valuing them as they see fit and disposing of them freely.
> In typically public relations, where interests are subordinated, the situation is reversed: it is up to the law to capture and identify a specific general interest in order to define it and elevate it to a public interest and, with that, prioritize, under certain conditions, its priority fulfillment, even with the total or partial sacrifice of other interests. (MOREIRA NETO, 2014, p. 95).

State activity can be guided towards satisfying needs that are linked... directly fulfilling the desires of society or prioritizing those of an instrumental nature, of support, thus giving rise to the distinction between primary and secondary public interest:

> a) **Primary public interest:** relates to the need to satisfy collective needs (justice, security, and well-being) through the performance of administrative activities provided to the community (public services, police power, promotion and intervention in the economic order); and
> b) **Secondary public interest:** This is the interest of the State itself, as a subject of rights and obligations, fundamentally linked to the notion of the public treasury's interest, implemented through instrumental administrative activities necessary to meet the primary public interest, such as those related to the budget, public agents, and public assets. (OLIVEIRA, 2023, p. 45).

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Oliveira (2023, p. 45) notes that, for traditionalist scholars, the public interest
The primary interest, not the secondary interest, should prevail over the interests of individuals.

Thus, both the principle of supremacy and the principle of the unavailability of the public interest
its purpose is to guarantee the superiority of the claims of the Public Administration in the event of
This conflict with the desires of those being governed ultimately leads to an imbalance in development.
of legal relations, in addition to limiting the possibility of the full exercise of citizenship.

The disconnect between Administrative Law and Constitutional Law has roots.
historical. Although both have as their object the relations between the State and Society, it is
It is possible to identify that the evolution of Administrative Law occurred prior to that of Law.
Constitutional.

As Moreira Neto (2014, p. 51) observes, even in the most rudimentary societies
In primitive societies, some form of administration of the group's common interests would have existed, which, in
In a broad sense, it corresponds to a Public Administration.

HISTORICAL BACKGROUND

The earliest records of the existence of a civilization in Greece date back to...
approximately 2000 BC, in the vicinity of the Mediterranean, Aegean and Ionian Seas, during a period
Following the migration of nomadic peoples: Ionians, Achaeans, Aeolians, and Dorians. The famous city-states, which were
City-states appeared around the 7th century BC and constituted the main type of
The organization of the political life of Greek citizens. The main Greek city-states were Athens and Sparta.

The works of the major Greek philosophers, such as Plato, Socrates, and Aristotle, had
a major influence on the construction of the main concepts of Hellenic community life; thus,
The concepts of ethics, justice, democracy, morality, and equality before the law developed.

In the legal field, although the Greek normative system emerged with
based primarily on customary norms, several city-states already possessed
regulations on topics related to Administrative Law, especially
in matters concerning military organization and defense, city and territorial planning, revenue collection and
management of public funds, among other things. Thus, in Ancient Greece, it is possible to identify the exercise
of police power, the provision of public services, as well as the division of functions in dealing with
collective interests between the organs of the polis and the personnel in charge of carrying out the tasks.
(MOREIRA NETO, 2014, p. 51).

Regarding Latin Law, the emergence of Roman civilization is dated to the 7th century BC.
in the vicinity of the Mediterranean Sea, having expanded to such an extent that it became a
One of the greatest empires of the ancient world. In fact, Rome developed one of the most important systems.
of legal norms of the world, whose emphasis was of an eminently private nature, and whose influence

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It has inspired various legal systems throughout different eras.

Although the rules of Roman Law dealt primarily with civil matters, or
In other words, those related to legal relations between private individuals – leading to the conclusion that Public Law has not reached a level of development comparable to Private Law – we cannot to claim that Roman legislators ignored the rules governing administrative matters, because the creation of several important positions for state administration is observed, such as... For example , *consul, aedile, praesides, curator reipublicae,* among others. (MOREIRA NETO, 2014, p. 51).

As Araújo teaches:

> It can be seen in Justinian's "Institutes" and "Code," but especially in the "Digest," that concepts such as public goods for common use, beaches and maritime lands, the functioning of certain bodies with their authorities (aediles, consuls, proconsuls, praetors) and services (prisons, public roads and rivers, military, census, tax collectors, statistics) were already being discussed. The praetor's edicts were true ordinary or regulatory administrative acts, self-executing, since, like administrative officials, the praetors acted as delegates of the emperor. Scholars often point out, in books, titles and fragments of the "Digest," numerous themes of Administrative Law dealt with therein. (ARAÚJO, 2000).

The period of history that begins in the 5th century is called the Middle Ages, or Medieval period. with the fall of the Western Roman Empire in the year 476 (Rome was invaded by Germanic tribes) led by Odoacer and the deposed Emperor Romulus Augustulus) and ends in the 15th century. with the capture of Constantinople, capital of the Eastern Roman Empire, by Sultan Mehmed II, leader of the Ottoman Empire, in 1453. Therefore, the entire medieval period lasted approximately a thousand years.

According to Di Pietro (1998, p. 19), in the Middle Ages there was no appropriate environment for the The development of Administrative Law occurred during the era of absolute monarchies, where everything... Power belonged to the ruler (usually the figure of the King) and his will was law, to which they were subject. subjecting all the inhabitants of a given territory, whether men, women or children, natives or foreigners.

In the Middle Ages, two distinct phases in business administration can be identified. Public spheres: the feudal phase and the communal phase. The feudal phase (late 5th century to 12th century) It was characterized by emphasizing the patrimonial aspect of administration, as well as by the occurrence frequent arbitrary actions; already in the communal phase (from the 12th to the 15th century), the concept appears. of public assets, whose management is inspired by the Roman model of management. (Moreira Neto, 2014, p. 51).

This period is also called the Police State, and is marked by the emergence of theory of state irresponsibility, summarized in the maxim *"the king can do no wrong"* according to under which the monarch's actions could not be subject to any kind of review or judgment, behold

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who would be in a position of superiority within the legal system. In this system, the resolution of any disputes were submitted to the monarch, who possessed almost absolute jurisdiction; in cases where If an appeals phase was permitted, this was the responsibility of a Council, also subordinate to the Governor.

However, the works of some glossators1 from the medieval period stand out , which greatly They contributed to the development of public law, such as the commentaries on the Justinian Code. and to the *Liber Constitutionis.*

The period known as the Modern Age encompasses the era between the beginning of the 19th century. XV, in 1453, when Constantinople, the capital of the Eastern Roman Empire, was conquered by Ottoman Empire, and the end of the 18th century, in 1789, with the storming of the Bastille, in the Revolution. French.

During this period, notable changes occurred within societies, especially in the political, financial, religious, moral, and scientific aspects, which were precursors to important events that completely changed the course of humanity: the Protestant Reformation, the The Renaissance, the Enlightenment, and the French Revolution.

During the Renaissance, a transition to a new model of state occurred, and, in As a consequence of a new configuration for Public Administration, a major movement emerges. of interest in the study of the Classics of Roman Law, especially in Italian universities, the which brings back to light legal understandings and concepts from Ancient Rome.

It is in the Modern Age that we observe the development of Administrative Law, as independent discipline, based on the idea that even the Ruler should submit to Law; thus was born the concept of the Rule of Law. Another important doctrinal development was the principle the separation of powers, according to which one power is controlled by the action of the other.

Still in the Modern Era, doctrine indicates the day February 28, 1800 (or 28, Pluviosos). (from Year VIII, in the French Revolutionary calendar), as being the "birth date" of Law. Organized administration as we have it today, the landmark event was the creation of the *prefectural councils.* (municipal councils, or civil government councils), which were institutions responsible for deciding regarding certain types of litigation.

Therefore, Administrative Law is considered to have officially originated with the revolutions. liberals, who ended the absolutist model that had prevailed since the Middle Ages, whose basis was based on the idea that the sovereign could not err, could not harm the State; this This understanding was only overcome with the evolution of the administrative movement, mainly with the application of the principles of legality and separation of powers. A characteristic of the application

1The glossators were jurists who made commentaries on texts of Roman Law or Canon Law; such commentaries (the glosses) were very important for understanding the institutions of ancient law and influenced the foundations of modern Legal Science.

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One of the principles of separation of powers in the French legal system is that disputes involving the Public administration bodies are not subject to common jurisdiction, but rather to their own distinct bodies. The Judiciary, seeking to prevent one branch of government from exercising coercive powers over another.

This French “administrative justice” (or, more accurately, administrative litigation) The French system emerged with the enactment of Law 16/24 of 1790, which established that judges judicial bodies should not prosecute and judge the acts of public administration. The composition of Administrative litigation is complex, involving several bodies, the main one being the Council. of the State, which in addition to its own functions has appellate jurisdiction, followed by the various administrative courts and other support bodies.

Thus, it can be observed that Administrative Law evolves as the State changes. through transformations and changes in orientation. Analyzing the phenomenon, three phases can be distinguished. main points:

a) Liberal State of Law: In the embryonic stage of Administrative Law, linked to the establishment of the Liberal State of Law, the State was conceived as an enemy of the people, which was understandable given the numerous arbitrary acts committed during the previous period (absolutism). The State ("night watchman") assumed a markedly abstentionist role in the social and economic order, overvaluing free enterprise, whose central concern was to ensure the freedom (autonomy of will) of individuals. The evolution of the State, however, demonstrated the need for the Public Power to intervene in economic and social relations, through the imposition of public order norms, with the aim of eliminating the social inequality generated by the abstentionism of the Liberal State. At that moment, the State ceased to be understood as an "enemy" of society and began to be seen as an ally, whose role was to act positively in the economic and social order, for the benefit of the public interest.

b) Social State of Law: With the emergence of the Social State of Law (Welfare State), particularly after World War II, state intervention in the economy and social relations is reinforced, with the aim of minimizing some of the ills stemming from the liberal period.
The need for agility and efficiency in the state leads to the so-called "flight to private law," with the contractualization of administrative activity (administrative contract instead of administrative act), replacing the authoritarian model with a consensual one, and the establishment of administrative entities with private legal personality. Despite the significant achievements of the Welfare State, this model ended up excessively hypertrophying the state apparatus, making it incapable of meeting the numerous tasks that became its responsibility.

c) Democratic Rule of Law: the need to reduce bureaucracy in Public Administration, in order to streamline state action and make it more efficient, leads to the "return of the pendulum," with the devolution of economic activities and the delegation of public services to the private sector.

The Post-Social or Subsidiary State does not signify a devaluation of Public Administration, but, on the contrary, represents a redefinition of the administrative activities that should be provided directly by the State and of the other activities that can be provided by private entities, notably because they do not involve the need to exercise the power of authority, with the valorization of civil society in the performance of socially relevant activities.

Starting in the 1980s, several countries began a movement of fiscal adjustment and privatization, notably Great Britain, the United States, and New Zealand. In Brazil, the reformulation of the role and size of the State was implemented in the 1990s through important legislative changes that liberalized the economy and effected privatization. At the constitutional level, Constitutional Amendments 06/1995 and 07/1995 opened the economy to foreign capital, and Constitutional Amendments 05/1995, 08/1995, and 09/1995 mitigated state monopolies. During this period, the National Privatization Program (PND) was instituted by Law 8.031/1990, later replaced by Law 9.491/1997.

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> The state apparatus was reduced and the "bureaucratic Public Administration" was replaced by the "managerial Public Administration" following the Administrative Reform instituted by Constitutional Amendment 19/1998. While the bureaucratic Public Administration is concerned with processes, the managerial Public Administration is oriented towards obtaining results (efficiency), being characterized by the decentralization of activities and performance evaluation based on indicators defined in contracts (e.g., management or performance contract).
> Based on the four sectors of the state apparatus, it is possible to affirm that the strategic core is inherent to the State, and its delegation to private entities is prohibited, even though citizen participation in the development of public policies is possible (and advisable). Exclusive activities, when there is no need to exercise police power, should be delegated to private entities through the concession and permission of public services (Article 175 of the Brazilian Federal Constitution). Non-exclusive services, whose ownership does not belong solely to the State, should be provided primarily by private entities, with the State responsible for promoting them (Law 9637/1998 and Law 9790/1999 established, respectively, the management contract and the partnership agreement as instruments for promoting social activities). Finally, the activity of producing goods and services for the market, being essentially private in nature, should generally be carried out by private individuals (principles of free enterprise and subsidiarity), with the possibility of its provision by the State, through state-owned companies, when there is a relevant collective interest or an imperative of national security (article 173 of the CRFB).
> It is important to clarify that downsizing the state apparatus and reshaping the activities that should be carried out by the state do not mean a simple return to the classic Liberal state, because now the state does not relinquish intervention in the economic and social sphere. The primary change lies precisely in the technique used for this intervention, which ceases to be direct and becomes indirect (subsidiary), notably through regulation (Regulatory State) and public funding. (OLIVEIRA, 2023, p. 12).

Therefore, it can be safely stated that Administrative Law as a discipline Autonomous and structured, it has its origins in the wake of the French Revolution of 1789, along with... the constitutionalist movement; however, this does not mean admitting that before the movement revolutionary if there were no administrative rules aimed at regulating the functions of The role of the State. One of the main concerns of the new liberal order was to subject the State to a written law, debated and enacted by a body representing the popular will, which had Legitimacy, attribution, political and normative force to express the will of citizens in laws.

Furthermore, the principle of separation of powers, dividing executive competencies, legislative and judicial reform subjected the state apparatus to one of the main guiding principles of the Administration. Public: the principle of legality, which extended not only to the Executive, but also to the Legislative and Judicial branches, thus binding all actions of the State, whether regarding its organs and institutions, both in terms of public and political agents in the exercise of their functions.

Oliveira (2023, p. 12) observes that due to the recognition of superiority Given the hierarchical structure of constitutional norms, the entire legal system must conform to the text of the Constitution. Constitution; therefore, Administrative Law is also undergoing important transformations in The function of the constitutionalization of law.

However, it was found that the constitutional text could often serve as justification for the commission of arbitrary acts by the State (a characteristic that is present primarily in the context of World War II, which led to European Constitutionalism.

Year V, v.2 2025 | Submission: 12/25/2025 | Accepted: 12/27/2025 | Publication: 12/29/2025

underwent major changes. Among the characteristics of this new constitutionalism, we can...
Highlight:

> a) the rise of the democratic principle, after the totalitarian period, as the sole principle of political organization;
> b) the establishment of concentrated constitutional jurisdiction, inspired by Kelsenian doctrine;
> and
> c) the creation of a special system of fundamental rights in the face of eventual and transitory majorities, guaranteed by constitutional justice. (OLIVEIRA, 2023, p. 13).

Neoconstitutionalism aims to correct the positivist state through a Public administration that promotes respect for fundamental rights, through Transformation of the Democratic Rule of Law into a Constitutional Rule of Law.

Such a State, based on the legal principles present in the model Neoconstitutionalism seeks not only to align Administrative Law with the constitutional text, with regard to the need to submit to the regulatory instrument of legal relations internal to the normative system, but mainly, with the popular will, as a legitimate force. holder of state power.

Regarding this topic, Oliveira (2023, p. 13) clarifies that this new constitutionalism ("neoconstitutionalism", "contemporary constitutionalism" or "advanced constitutionalism") Its main characteristic is a close connection between law and morality, especially with the recognition of the normative nature of constitutional principles and the growing appreciation of fundamental rights. The author also states that, although the normative character of The Constitution had already been recognized since the famous decision of Judge Marshall in the Marbury case. v. Madison, in 1803, however, doctrine has indicated the Luth Case, of January 15, 1958, judged by the German Federal Constitutional Court, as being the landmark of the process of Constitutionalization of Law.

Oliveira (2023, p. 13) warns, however, that the process of constitutionalizing law does not It boils down to simply placing the text of the Constitution as the main norm of the legal system. a State; it is necessary to carry out a whole process of realignment of the legal system, in order to that it becomes imbued with constitutional norms, thus, any legal interpretation must necessarily passing through the axiological filtering of the Constitution.

A NEW PERSPECTIVE ON ADMINISTRATIVE LAW

According to Oliveira (2023, p. 14), the movement in favor of the constitutionalization of The legal system has modified some of the main foundations of Administrative Law, among others. which:

> a) the redefinition of the idea of the supremacy of the public interest over the private interest and the rise of the principle of balancing fundamental rights;
> b) overcoming the conception of the principle of legality as a positive binding of

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administrator to the law and the establishment of direct adherence to the Constitution;
c) the possibility of judicial review of discretion based on constitutional principles, setting aside the paradigm of the unreviewability of administrative merit;

d) a reinterpretation of the democratic legitimacy of the Administration, with the provision of instruments for citizen participation in administrative decision-making (consensus in the Administration).

The idea of the supremacy of public interest over private interest results in the consequence of its unavailability in relation to individual interests, since it is recognized that the interest of The interests of the State as administrator are superior to those of private individuals, considered on a case-by-case basis.

Regarding the definition of public interest, there have also been modifications with the phenomenon of Constitutionalization of Administrative Law, as doctrine has come to consider it linked to realization of fundamental rights, insofar as these (and, consequently, their promotion and protection) represent the very interest to be pursued by the State; therefore, there is no interest public that are not directly related to the fundamental rights foreseen and protected according to the constitutional text.

Therefore, considering the influence of post-positivism on Administrative Law, it is not... It can dissociate the existence of public interest from the actual realization, by the Public Administration. promotion of fundamental rights.

There is also a change in the interpretation of the binding nature of the principle of legality. administrative actions by the Public Administration, based on the Constitutionalization of Law Administrative. Indeed, the principle of administrative legality, provided for in article 37 of The Federal Constitution stipulates that the actions of the Public Administration can only occur within the established guidelines. situations foreseen by law, whereas a private individual, in the absence of a legal prohibition, may act. freely.

Thus, in Rosa's lesson:

> (…) the actions of a public agent, or the Administration, are permitted only if allowed, granted, or authorized by legal norm, and no action is admitted that does not contain prior and express legal permission. Private individuals are allowed to do everything that is not prohibited; administrators are only allowed to do what is permitted by law (in a broad sense). There is no excessive freedom or freedom that is not expressly granted. All administrative action is bound by this principle, and any act performed without a prior law providing for it is illegal. The same will apply if the disobedience relates to a regulation or any other normative act. (ROSA, 2011, p. 40)

It is noted that the moderation of the principle of administrative legality refers to subordination. The Administration's role is not only to enforce legislation, but, first and foremost, to enforce constitutional norms.

Thus, based on the concept that principles guide legislation, the The principle of legality not only attenuates or eliminates the mediating role of law so that... Public administration performs its functions, but it also allows the State to refrain from acting. The Executive Branch acts merely as an executor of the law. Thus, in administering, it applies the law.

Year V, v.2 2025 | Submission: 12/25/2025 | Accepted: 12/27/2025 | Publication: 12/29/2025

autonomously, which allows and, in some cases, requires the Public Administration to...
fulfilling one's responsibilities, acting outside of what is written in the law, beyond what the law provides, and even
even, in opposition to it.

In its *ex legis* actions , the Public Administration, when conducting a normative assessment in
In accordance with the new administrative interpretation, analyze the text of the law and verify if it is...
aligned with constitutional values, principles, and norms. Based on this analysis, the
The Public Administration effectively fulfills the legal and constitutional precept implicit in its function of guaranteeing the
realization of constitutional rights, especially fundamental rights.

In administrative practice *praeter legem,* after analyzing the legal order, it is found that...
The legislation is silent regarding the specific case presented for state action. This allows
and, in certain cases, imposes on the Public Administration the need to resort directly to
The Federal Constitution, in order to determine the specific rule to be applied. This determination is made
through subsumption to principles and rules, often reflecting values that represent
implicit principles. In this way, the Administration does not remain inactive due to the lack of a law.
that regulates the situation, but rather establishes its normativity directly from the Constitution and
due to the normative force that it radiates to the different aspects of Law.

Administrative practices that act against the law, although a controversial topic, are not...
It deviates from the theoretical basis presented so far. This is because it allows the Public Administration to...
Ignoring an explicit rule by deeming it unconstitutional. It is worth noting that this state action does not
requires, as is often interpreted from the perspective of classical legal positivism, a
Prior authorization from the Head of the Executive Branch is required to disregard the law.

In this context, the submission of Public Administration to the Principle of Legality can be
viewed as a weakening of legislation in favor of higher values, aligning with
the principles of post-positivism and neo-constitutionalism that seek to re-establish the connection between
Written law and morality, in an aspect that reflects a neo-natural law approach.

However, it is important to emphasize that acting in accordance with the law and the legal system requires a
detailed justification of the administrative act, which further increases the importance of the motivation.
of the acts of the State, being a facet of argumentative hermeneutics applied to Law.
Administrative.

Regarding the limitation of the review of discretionary administrative acts, according to the view
conventional from the perspective of legal positivism, when recognizing the Constitutionalization of
In Administrative Law, it is necessary to understand that Public Administration is subject to
different levels of compliance with the law.

This makes it possible to challenge the idea that the merit of discretionary administrative acts
It is immune to intervention by the Judiciary, since it is configured as an assessment of

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convenience and opportunity on the part of the public manager, in relation to the motives and objectives of the act. administrative.

In the context of neo-constitutionalism, the Judiciary has the responsibility to to verify that all administrative acts comply with administrative legality, the which includes identifying cases of unconstitutionality. In this sense, the concepts of acts Discretionary administrative acts lose their rigidity, as does the separation between these acts and the... linked.

Furthermore, it is essential to expand the Judiciary's capacity for analysis of the acts. administrative matters, strengthening the constitutional principle of the inalienability of jurisdiction, which is a A fundamental guarantee in Brazil.

It is essential to mention the democratic contribution associated with the State. Constitutional Law. In the context of Administrative Law, this means the need for a more intense and real participation of the community being governed in the formulation of guidelines, such as, for example... For example, in public policies that impact the individuals who will be affected by the decisions. administrative.

As already mentioned, the Constitutional and Democratic State of Law, influenced by New directions in neo-constitutionalism bring Administrative Law closer to the Constitution, which acts as a normative tool, as well as that of the people, who are the true holders of power, allowing for the direct expression of their will.

Administrative Law is a normative field that guides the actions of Public Administration and to regulate the legal interaction between it and the citizens it serves, especially regarding the provision of public services. It is fundamental that this branch of In law, the importance of societal participation must be considered, recognizing the rights of individuals. to engage and dialogue with the State in order to improve decisions that affect their lives.

When it comes to resolving conflicts through consensual methods, it is important It is important to highlight that arbitration, conciliation, and mediation have always been recognized. Therefore, it is not necessary to... This can be considered a novelty in the legal field. The recent difference lies in the emphasis placed on it. Legal scholars and professionals have been giving these approaches in recent decades, considering them as priorities.

It is essential to recognize the importance of dialogue between the parties involved, because a decision Without this interaction, the outcome can be unilateral, illegitimate, and unjust. Conciliatory justice, which is based on conversation, is the most effective means of achieving peace, allowing that the parties themselves develop a consensus and resolve the dispute with conscious will and guided by all those involved. Furthermore, when addressing consensual methods of resolution of In the face of conflict, the goal is to resolve disputes in society in a way that causes the least possible disruption.

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Conflict resolution methods based on consensus will be effective whenever...
There is a disagreement between people, that is, whenever a conflict of interest arises or a
Disputed claim.

Therefore, it is important to note that alternative dispute resolution methods are not
These are completely new approaches, but they are part of a movement known as ADR *(Alternative Disability Treatment).*
Dispute Resolution), initiated in the 1960s and 1970s, which sought to facilitate access to justice.
to propose new models for conflict resolution, recognizing that traditional methods, which are
Excessively formal and costly, and lacking citizen participation, they were no longer adequate.
to meet the needs of a society with increasingly complex demands.

Dispute resolution can be achieved through non-judicial methods of dispute resolution.
conflicts, given that state justice is not solely responsible for resolving society's challenges.
Dialogue between the parties involved and the solutions they themselves propose have the power to promote
Peacemaking in a fair and more effective way. In this context, the main objective of these methods is
to find a suitable solution that respects the will of the parties, instead of submitting to imposition.
authoritarianism in the letter of the law.

In the quest to resolve disputes, it is essential to offer the individual not only the path
judicial, but also, with special attention, alternative conflict resolution methods that do not depend on
of a judicial decision, always prioritizing consensual methods. The main approaches
Preferred methods for a peaceful resolution include negotiation, conciliation, mediation, and...
arbitration.

Arbitration is the procedure where the parties involved decide to refer the dispute to...
A third party will make a binding decision that must be respected by all involved.
This approach is similar to "private justice," where the parties themselves select the arbitrator.
responsible for resolving the controversy.

In other modalities, conflict resolution is sought by the parties themselves in a way...
consensual and not imposed; the third party involved (mediator or conciliator) acts only as
a facilitator, without a judging role. Furthermore, the intervention of this third party must be neutral.
aiming to help the parties reach the best solution to their disagreement.

During negotiation, the parties involved themselves seek to resolve the conflict, and may...
to have the help of a third-party mediator. This approach is ideal when there is a good
The relationship between the parties allows for a direct discussion of the issues at hand.

In conciliation, a neutral facilitator participates to help the parties reach an agreement.
This approach is recommended for resolving simple conflicts effectively. There are two types.
of reconciliation: the formal one, which occurs within the institutional sphere, and the informal one, which involves any
effort by a third party, whether through correspondence, phone calls or other methods, with the

Year V, v.2 2025 | Submission: 12/25/2025 | Accepted: 12/27/2025 | Publication: 12/29/2025

The objective is to promote dialogue between the parties.

Mediation is a process that lies between conciliation and arbitration, since...
It involves a deeper and more lasting relationship between those involved in the conflict. The role of the mediator.
It is to facilitate communication between the parties, thus aiming to reach an amicable resolution for the matter.
dispute.

Considering all these methods, it can be concluded that they are more beneficial than...
Dispute resolution through an imposed court decision. This is because this approach does not
It does not promote reconciliation between the disagreeing parties, nor does it contribute to social harmony.
Only a fraction of the conflict is addressed, which allows the true origins of the problem to be revealed.
remain intact, potentially generating new disputes. Furthermore, the defeated party
generally does not accept the imposed decision, resulting in multiple appeals and, consequently, in
significant difficulties in resolving the conflict.

However, the facilitator must be highly qualified to be able to identify
any potential economic, social, hierarchical, or cultural imbalances between those involved and, if
If necessary, correct them. This is important because the pursuit of reconciliation should not occur at just any time.
price, otherwise solutions that are detrimental to the disadvantaged party will be accepted.

Thus, for the conflict resolution to be equitable, the will of the interested party must be considered.
to be not only free, but also informed and fully understood; if there is inequality
Between the parties, there is a risk that conflicts will be resolved unfairly.

Therefore, it can be concluded that the dejudicialization process is based on two trends that...
They intertwine: the first arises within the judicial system itself, due to the excess of cases in
The first comes from the Judiciary and the difficulty in meeting the growing demand; the second comes from outside the...
courts, economic and market entities; in this way, less complex conflicts
These issues should be resolved through simpler methods, reserving judicial review for other matters.
situations.

In the context of democratic constitutionalism, it is unthinkable that a decision of interest
Public decisions should be made without dialogue with citizens. The exchange between those who govern and...
Those who are being managed thus become an essential element in legitimizing these decisions.
because it involves the citizen in the responsibility of promoting and protecting rights and principles.
fundamental principles established in the 1988 Constitution.

Such interaction, based on popular participation, contributes to the improvement of
democracy, insofar as the community begins to collaborate with the State in aspects such as
Planning, decision-making, execution, and supervision of the administrative function.

The proposal for a Consensual State gains prominence by encouraging communication between the
Public administration and citizens, enabling more engaged participation from the population.

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Year V, v.2 2025 | Submission: 12/25/2025 | Accepted: 12/27/2025 | Publication: 12/29/2025

Therefore, public managers should strive for greater efficiency in administrative actions, aligning themselves with... to the principle of efficiency, which is clearly established in article 37 of the Federal Constitution, obliging all public agents to perform their duties with agility, excellence and productivity.

Thus, administrative efficiency relates to how the activity is carried out by public servant. Therefore, it is concluded that opting for a consensual resolution within the Public administration does not imply favoring private interests, as the collective interest also applies. This will be taken into consideration when developing a consensus.

Several factors contribute to the Public Administration becoming the main "user" of the Judiciary: its vast structure, composed of federal, state, and municipal bodies; the already cited judicialization of public policies; the lack of communication between the administration and the citizens, among other aspects. Furthermore, the Brazilian judicial system is one of the most expensive. Globally, this generates a significant impact on public finances due to the maintenance of many... processes.

It is also important to point out that there is no uniformity in court fee rates. applied in each of the States, and current legislation lacks clarity in this respect, as well as the lack of well-defined criteria to explain the differences in prices charged in the various federal units.

Therefore, it is not difficult to see that, when evaluating a low-value demand, the expenses Costs generated for the judicial system can exceed the amount in dispute, leading to the inevitable... conclusion that alternative solutions should be sought for disputes within the Administration. Public.

Furthermore, there are several advantages to a consensual alternative in resolving Conflicts with the State can provide, such as improvements in the realization of collective interests, a increased transparency in administrative actions and a greater likelihood of collaboration by It is the citizens' responsibility to fulfill the obligations they have undertaken.

Although the pursuit of a more consensual Public Administration is a relevant issue. Currently, up until 2015, there was no provision in the legislation that promoted consensus. in the administrative process, even if it established the obligation or the possibility of using extrajudicial means of dispute resolution.

It was only in March 2015, with the approval of the NCPC (New Code of Civil Procedure), that the issue of consensus was addressed. In public administration, this was specifically addressed in article 174, which stipulated that... Federal entities should establish mediation and conciliation chambers for consensual resolution. of administrative conflicts. In May of the same year, Law 13.129 came into effect, which made possible The use of arbitration in Public Administration. Finally, in June 2015, it was sanctioned.

Year V, v.2 2025 | Submission: 12/25/2025 | Accepted: 12/27/2025 | Publication: 12/29/2025

The Mediation Law, which, in its article 32, established the possibility of creating chambers by federative entities for the prevention and resolution of administrative conflicts in their respective bodies. Public Advocacy.

It is thus clear that the set of legal norms in force, combined with a new The interpretation of the principles of Public Administration (which were previously considered rigid) makes it possible to that the adoption of a consensual option comes to be seen not only as a possibility, but as a necessity. Promoting consensus in Public Administration has, in fact, Democratic constitutionalism is strengthened to the extent that citizens become involved in... Administrative decisions help promote social harmony.

CONCLUSION

Consensualism is becoming increasingly common in the field of Law. Administrative, with the aim of facilitating dispute resolution through mutual agreement, instead instead of relying on lengthy and conflicting legal proceedings. This approach brings a new perspective on Process management, seeking to increase efficiency and reduce costs. It represents a an advantageous alternative to the traditional litigation model, offering important benefits. Benefits include increased speed, resource savings, and improved interactions between the government. and the citizens. However, its adoption requires cultural transformations, investments in training and measures to ensure impartiality.

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