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av

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Abstract

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The thesis gives a contribution to the general theory of administrative and public law in order to develop a systematic and conceptual framework for better and more realistic descriptions of public administration. The central claim is that administrative law should take as its starting point the fact that public administration is concrete activity. This instead of focusing on administrative procedure and exercise of public authority (myndighetsutövning). Rather than being seen as a peripheral aspect surrounding the normal core of administrative procedure, the concrete activity should be seen as the normality. Administrative procedures and exercise of public authority instead function as exceptions which are procedurally regulated to a higher degree. The understandable focus in administrative law on these parts of public administration activity should thus be adjusted through a shift of perspective towards administrative activity as a whole. The first chapter describes the theoretical and methodological approach. The first aspect is a broader view of public law, inspired by global administrative law, international public authority, the German tradition of Staatslehre , the contemporary revival of administrative law in the Neue Verwaltungsrechtswissenschaft, and political jurisprudence (Martin Loughlin). Theoretical inspiration comes from Scandinavian legal realism, the shift of focus from the sovereign towards the administration (Michel Foucault, Giorgio Agamben). Also concerted action (Hannah Arendt) and concrete order thinking (Carl Schmitt) as part of a broader vein of institutionalist thinking (Santi Romano, Marco Goldoni). The methodological approach is inspired by the concept of description (Anne Orford, Michel Foucault) as well as a materialist perspective and immanent critique (Karl Marx). The second chapter consists of a close reading of all important doctrinal and legislative sources in Swedish administrative law pertaining to the theme of the study. Important findings include: The great difficulty with which administrative law can grasp the heterogenous activity of public administration; The negative definition of administration as what is left of state or public activity when legislation and adjudication is positively defined; The critical development of the concept of exercise of public authority in connection with the codification of general administrative law in the Swedish Administrative Procedure Act of 1971; The lack of positive definitions and in general discussion, theoretical or otherwise, of concrete activity in administrative law literature. The third chapter develops the immanent critique through an analysis of the different components of administrative activity, especially before, during, and after an administrative decision. Six new or developed concepts are suggested: unregulated administration; measure as a basic concept in administrative law; forms of administrative action (Handlungsformen); two dimensions of exercise of public authority; consumption of exercise of public authority in decisions; and a special administrative relation to complement the general administrative relation and the private law relation. The fourth and final chapter summarizes the preceding study and suggests future avenues of research. The main aim here is to further develop a broader public law discipline, incorporating international research, comparative studies as well interdisciplinary sources. Along this path there is a hope and potential for a restored eclectic discipline that could take up the mantle of what Hegel called a »science of the state».

Keywords: public law, general theory, administrative law, jurisprudence, legal theory, materialism, immanent critique

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