

Governmental Relations

A South African Perspective



Jan J Hattingh

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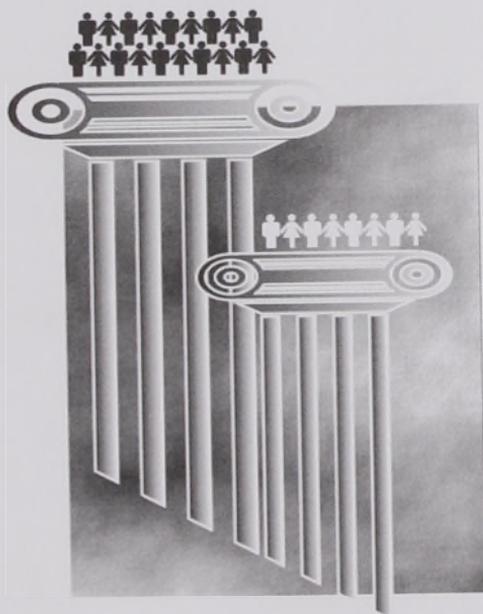


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A South African Perspective

Jan J Hattingh



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"The problems of public programs are political, administrative, legal constitutional, practical, theological, social, economic, ideological, - all joined and scrambled in ways that make it difficult even to specify the shape and scope of the problems. These are problems of inter governmental relations."

Dwight Waldo

To my wife, children,
grandchildren
and great-grandchildren

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Foreword

The 1996 Constitution of the Republic of South Africa places considerable emphasis on the necessity for governmental co-operation, and lists a number of so-called "principles of co-operative government and intergovernmental relations".

Provision is also made for the introduction of an Act of Parliament to establish or provide for structures and institutions to promote and facilitate compliance with the principles enumerated and the intergovernmental relations which ensue.

Given the plethora of governmental bodies and institutions, and the almost countless numbers of persons manning them, it becomes obvious that the scope and problems of governmental relations are wide and of great complexity. Add to this the fact that government bodies are constantly involved in many relationships with outside bodies and persons, then it becomes clear that governmental relations is a subject that requires much thought and thorough investigation. From this it is also clear that the principles inherent in this particular aspect of public administration should become subject to a more intensive study than has been the case up to this stage.

It would therefore be of great value if the basics of the problems and the essence of governmental relations could be properly and systematically set out and recorded in some form or another, so as to provide guidance and background knowledge to those persons involved in the application and maintenance of relations in the Public Service generally.

Numerous textbooks on aspects of governmental relations are available in bookstores in South Africa, but they mostly relate to the situation in other countries.

In any study of governmental relations in a particular country, the legal requirements and provisions, the models and the systems pertaining to local circumstances are of paramount importance, and only literature satisfying those criteria would be of much value to the students or practitioner in that country.

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My daughter Maxie Cloete for typing (and retyping) of the manuscript over an extended period. Her patience was highly appreciated

My daughter Marie Theron for originating and drawing the cover design. The design symbolises the three levels of government together with the persons employed in the various governmental bodies, in their respective relations with each other.

Man and Government

The fact that man is a social being has for many centuries had a decisive influence on his own development and that of his environment. During the course of many years, man's increasing need for protection, and for the joint utilisation of natural resources, or some other activity, resulted in the establishment and development of specific forms of associations (groups of people). As communities gradually became less isolated, they began to experience a need for an encompassing form of association to regulate the various minor groupings. These developments eventually led to the establishment of government, which is probably the most important form of association.

Although the annals of history do not always enable us to determine the precise sequence of events in past centuries, the community, in effect, must at some time or other in its existence have agreed to subject itself to a controlling authority. This implies that special powers were to be vested in the controlling authority to enable it to regulate and control relations between the various community members. According to Rousseau, Locke and other philosophers of the eighteenth century, the general expression of the community's will constitutes an unwritten agreement in terms of which the authorities are empowered to govern communities in accordance with the general will expressed by such community.

This unwritten agreement constitutes an important point of departure in the complex relations between the community and government in the present era. It implies that government was in fact established by virtue of the consensus of every individual within the community to forfeit personal "freedom" in the interests of ensuring order. This placed the newly established government under an obligation towards the individual, and hence towards the community as a whole, to promote the interests of the community by uniform action. In the days of Plato, the inhabitants of the ancient Greek city states assembled at a given place from time to time to decide on issues to be implemented by persons duly appointed in author-

ity. In contemporary democratic states, however, the numbers involved, and possibly also organisational problems, render the feasibility of a similar relationship and procedure of decision making virtually impossible and, indeed, also undesirable. Hence alternative methods had to be devised whereby the authorities could continue to exercise the function of government while ensuring that the community would retain its say in matters without gathering together for meetings from time to time. The alternative form of government which in due course emerged was a system of *representative government*, whereby the community elected representatives to govern on its behalf. However, the major requirement under this system was still to ensure that the governing authority could be called to account for the manner in which it exercised the function of government. This was accomplished by means of periodic elections, where the electorate could either endorse or reject the actions of the governing authority.

1.2

Constitutionalism

During the course of centuries, relations between government and governed extended and developed to the extent that it eventually became necessary for such relations to be placed on some or other permanent footing. This gave rise to Constitutionalism, a phenomenon developed mainly in modern democracies, whereby a community is governed according to a prescribed set of rules. This leaves the ultimate power in the hands of the community and ensures that it will be in a position to control its elected representatives. Hence a constitution is both an instrument for wielding and restricting power, since the powers and duties of the authorities are laid down in the constitution, and any act by the authorities in excess of these powers and duties may, in fact, be regarded as irregular, and also illegal.

A constitution need not necessarily be embodied in a single formal document, and numerous variations are possible. Probably the best example of a formal constitution is that of the United States of America. It is interesting to note that in many respects Great Britain should probably be regarded as the most “constitutional” state in modern Europe. England has no formal, written constitution, however, and its constitutional relations are based on traditional principles and documents such as the Magna Carta,

the Bill of Rights, the well-known legal concept of the Rule of Law, the Habeas Corpus Doctrine and the equally well-known Act of Settlement dating back to 1701.

In the modern era, relations between government and society are regulated by so-called national politics (i.e. not party politics or the views of any specific political party) by means of a constitution. This justifies the assertion that the aims of national government may be expressed in terms of the measure of security, prosperity and human dignity enjoyed by society. These three criteria encompass a wide-ranging moral significance which, in brief, implies that *the aim of government is the promotion of society's general welfare* - a fact which should be reflected in the constitution.

Developments during the course of centuries eventually gave rise to the need for the government to delegate some of its responsibilities to numerous subordinate authorities. Whereas relations were initially a matter between the central government and the community, pressures such as population increase, technological developments and possibly also the extension of territorial influence due to wars of annexation, as well as increasing duties and responsibilities, eventually obliged governments to subdivide and classify their own powers.

Prompted by the example of Montesquieu's well-known doctrine of *trias politica*, this initially led to the *horizontal* division of authority into legislative, executive and judicial functions. In comparison to the previous, simple single relation between government and governed, this represented an initial step in the transformation and extension of governmental relations.

Development and extensions in due course necessitated a further, *vertical* division of powers and duties between government and subject. Whereas the horizontal division had been effected on a functional basis, the vertical division was effected pre-eminently on a geographical basis. This led to the establishment of regional authorities exercising powers and performing duties on behalf of the central government and, subsequently, to governmental and semi-governmental institutions being established - and still being established - to perform specific tasks.

The Scope of Governmental Relations

As the responsibilities of government increased and the number of governmental bodies increased accordingly, regulations governing orderly relations between the various governmental bodies became increasingly complicated and comprehensive.

The study of relations between governmental bodies, which should include the study of relations between persons in authority (political office-bearers and public servants), as well as the comprehensive range of relations between such individuals and institutions, is a problem which extends far beyond mere pragmatic generalisations of constitutional and other legal-institutional requirements and frameworks. A knowledge of such requirements and frameworks is obviously essential for this field of study and it may indeed facilitate matters if this were the sole requirement for a study of this type. As matters stand, the study of governmental relations is rendered infinitely more complex and problematical by the growing number of governmental functions progressively involved in all levels of human activity, and necessitates an ever-increasing number of governmental bodies which of necessity become increasingly interdependent.

It should be borne in mind that, irrespective of the number and types of governmental bodies, each must contribute towards the government's objective of promoting the general welfare of society. At times, the resultant problems become evident only when it becomes essential, for example, to pinpoint the body responsible for decisions in regard to a specific matter among the numerous delegated and divided duties of government. When one also considers that few functions of any specific authority are exercised solely by that one body, it becomes abundantly clear that government has, in reality, become an organised complexity (Jones 1980:3) and that the study of governmental relations has become increasingly essential. In this context, Dwight Waldo may not have been far off the mark when he maintained (Hawley 1967 preface) that the problems of governmental relations are inherently political and administrative but also legal, constitutional, practical, theoretical, social, economic and ideological, and the combination and interrelation of these characteristics renders it extremely difficult to determine the exact scope of the problem or to identify acceptable and feasible solutions.

Another important reason for the complexity of this field of study is the fact that myriads of prescribed and other governmental regulations are applied by *people* in their respective positions of authority, which implies that the quality and success of any relational situation between specific governmental bodies depends also on the behavioural patterns of the persons involved. It should thus be taken into account that any relations between governmental bodies of necessity also involves human action and the influence of such actions and relations. Hence human behavioural patterns inevitably influence government actions, and although it is not necessarily essential to determine and control the behaviour and actions of such officials on a day-to-day basis (due, for example, to procedural provisions), it must be borne in mind that circumstances pertaining at any specific time may, without warning, result in deviations or a changing pattern of behaviour.

Although study of human behavioural patterns in situations of authority would obviously exceed the scope of this study, a government is nevertheless required to comply with ethical and moral rules in discharging its duties. This aspect will be dealt with in a later chapter.

1.4

Specific Problems

The study of governmental relations encompasses a number of critical issues which pervade virtually all aspects of governmental relations, and which demand a specific approach. The first of these problems is that although the study of governmental relations is essentially a study of government, it may also be regarded as a *facet* of government in that it is a phenomenon which comes into play whenever more than one governmental body is established within a certain governmental area. Hence the first problem necessitates careful demarcation of the field of study to avoid it escalating into a study of government in general.

A second problem is the interpretation of the term "relations". On the one hand, "governmental relations" refers to formal government structures and their mutual horizontal and vertical relations as laid down in the constitution, by legislation or by regulations. On the other hand, "governmental relations" refers to pragmatic relations between officials and governmental bodies - a field in which thorough investigation would demand

endless study. Hence the methodology followed in this book is to restrict investigation mainly to inter-organisational and structural-functional problems, and resort to critical-analytical investigation also when necessary.

A third problem is the concept of power in governmental relations - its possession, use and abuse, as well as the moral assumption that the possession of power will result in its correct application. The concept of power, its possession and its application are closely related and this will constantly crop up in these discussions.

The most sensitive problem in the study of governmental relations is to determine the scope and extent of the field of study. A comprehensive study of government and administration covers a vast field, and mention has already been made of the fact that governmental relations is but a *facet* of government. The problem, therefore, is to define the scope of this field of study. Since, however, governmental relations pervades the entire field of government and administration, there is a danger of extending its scope of study to all aspects of administration. However, as substantial studies have been published by highly capable researchers in the field of public administration, the inclusion of this field would serve no academic or educational purpose and be of little use as study material. The subject matter of this book nevertheless places it within the comprehensive framework of public administration (including the specific field of municipal government and administration). In regard to the subject matter, scope and emphasis, however, the author has been at pains to avoid it being classified as yet another book on general theory and practice of Public Administration as a discipline or public administration as a functional process. Hence the main accent in this book falls on governmental relations *in* the administrative process *in* government action.

Governmental relations as a specific phenomenon in the administrative process is a relatively new field of study. During the forties in the United States, Britain and elsewhere, the challenge of this field of study in many cases elicited, and essentially still elicits, a superficial and pragmatic approach. This applies especially to the United States, where governmental relations is naturally approached from the point of view of a federal government structure. However, this in itself would not constitute a problem, since the United States has indeed a federal government structure; the problem lies with the narrow "local" American interpretation, which complicates matters considerably and distorts the entire concept of govern-

ernmental relations. This restricted interpretation is closely followed by Reagan (1981:1) who roundly declares that the "old" federalism in the United States is dead and has been superseded by a "new" federalism known as "intergovernmental relations". Quite apart from the fact that South Africa is a unitary state and that its system of government differs considerably from that of the United States, this unfortunate misrepresentation and failure to recognise governmental relations as a worldwide phenomenon, irrespective of any particular form of government (in other words, also in Soviet Russia), distinctly limits the value of American publications for South African usage, and in some respects renders them valueless. The most notable deficiency in this field of study, however, is the generally limited and pragmatic approach and the need to place the study of governmental relations on a sound footing. With few exceptions, study in this field is generally characterised by a lack of academic research and profound thought. This is most unfortunate, since the complexity and scope of governmental relations increase as a never-ending stream of new governmental bodies, semi-governmental and quasi-governmental and other similar bodies are established to cope with the increasing task of government. Inadequate knowledge and understanding of the multi-faceted aspects of interrelations between governmental bodies cannot but result in fragmentation, duplication, overlapping and even to neglect or negation of the essential aspects of the objectives of government, these becoming the rule rather than the exception.

The general failure to study and apply the theoretical aspects of governmental relations, together with the increasing complexity of this field of study has resulted in a distinct need for clear, practical formulations in South Africa.

1.5

Sequence of Chapters

The subject matter of this book is both introductory and progressive.

The study of governmental relations may be approached in various ways, and chapter 2 reviews a number of these approaches, including the constitutional/legal, the democratic, the financial, and the normative/operational approach - the latter being the approach followed in this book.

This chapter also deals with the nature and scope of governmental relations in general.

Governmental relations as a phenomenon is widespread. In an attempt to facilitate the study of this phenomenon, the subject matter has been broadly divided into intergovernmental relations (relations *between* governmental bodies) intragovernmental relations (relations *within* governmental bodies) and extragovernmental relations (relations between governmental bodies and individuals outside the public sector). While the theory of *governmental distance* is of particular significance in *inter-governmental* relations, the theory of *intensity of relations* is a general phenomenon common to all governmental relations.

Chapter 3 deals with a few basic principles of Public Administration as an academic discipline, as well as details of the administrative process. As in other administrative manifestations, governmental relations manifests itself in this process by its influence and action on the six generic administrative functions, viz policy-making, structuring and organisation, finance, personnel matters, procedures and control.

Within the general context of governmental relations, various types of relations may also be brought about by *mandate*, by *agency* and by *partnership*. These different types of relations are discussed in chapter 4, which also deals with the *concept of power* in governmental relations.

Through the years, moreover, a number of ethical and moral norms have been established in public administration. These norms are particularly important for the promotion of meaningful relations. In the first instance, laws and other regulatory provisions do not create governmental relations *per se* but are primarily responsible for the framework within which specific relations are formed and maintained. In the second instance, the envisaged relations are ultimately formed by *people*. Such relations cannot be properly ordered in the absence of moral and ethic norms. Chapter 4 also deals with some of the most important norms applicable to relations. Chapter 5 deals with the influence of different forms of government on governmental relations. Besides the more or less loose federation of a confederation, attention is also paid to the federal form of government pertaining the United States of America. Developmental changes in the United States have resulted in substantial attitudinal changes in the federal form of government, and chapter 5 also deals with the causes and nature of

these changes. The unitary state and aspects of this form of government in Britain especially are also discussed in this chapter.

South Africa became a unitary state in 1909 and this tradition was upheld by the Constitutions of 1961, 1983, and also the present Constitution of 1996. Chapter 6 deals with the South African governmental structures as provided for in the 1996 Constitution, and the relations created between the various governmental bodies by this Constitution.

Bargaining and negotiation form very important chains in the links between governmental bodies and governmental persons in their relations with each other. The fundamentals and basic requirements of bargaining and negotiation are dealt with in chapter 7.

Although the basic essentials of governmental relations in general apply throughout the civilised world, there are nonetheless wide-ranging differences in the methodology applied in various states. A cross-national comparison of relations as applied in Britain, France, and the Republic of South Africa is made in chapter 8.

In view of the vast field covered by the study of governmental relations, this book is intended as an introductory study to the subject. Every authority, every government and executive body and, indeed, every individual fulfilling a function in the public sector contributes to and assists in creating governmental relations. The ultimate aim of this study is to provide a broad framework for analysing the complexities of governmental relations and to serve as a basis for practical application in the various government sectors.

It should therefore be regarded as being a book of direction indicators and to provoke thought rather than an irrefutable statement of fact (except, of course, when constitutional and legal facts are being discussed).

It is also to be noted that this book does not deal with labour relations in terms of industrial legislation *per se*. Those relationships are conducted on an entirely different level, although it is feasible that some of the principles contained in this book will have a relevancy in that field, such as those principles contained in the chapter on bargaining and negotiation (chapter 7), for instance.