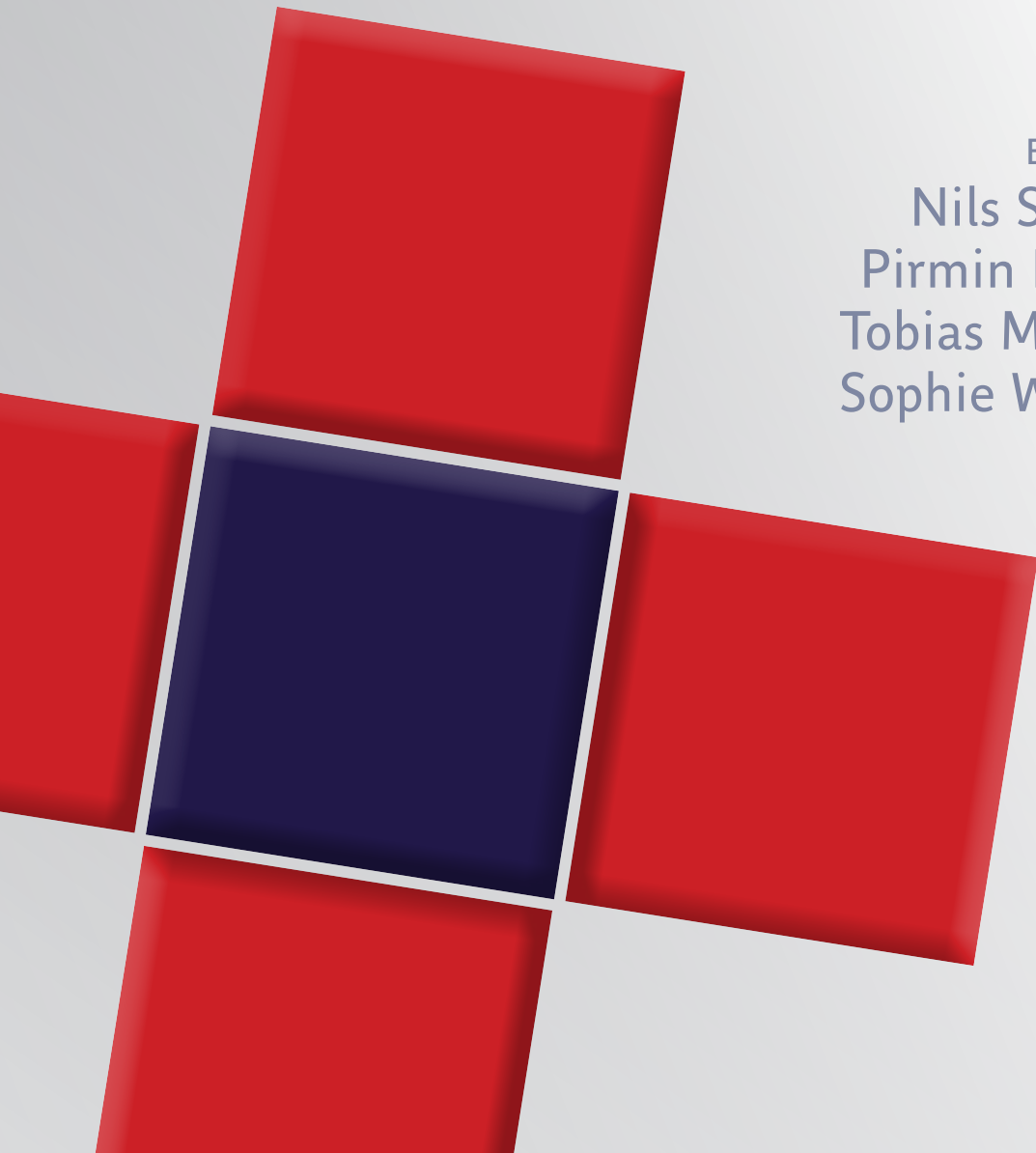


# Understanding and shaping public administration: **The IDHEAP model**

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# 8 Governance

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## 8.1 The importance of governance for public administration

Lausanne is one of the world's leading centres of cancer research. Immunotherapy, aimed at supporting the body's natural defences to destroy cancer cells, is the focus of cutting-edge research and experimental treatments. In 2015, the American Ludwig Foundation committed to investing over CHF 100 million over a ten-year period. Vaud canton<sup>14</sup> funds major real-estate investments to house the research, and supports the University of Lausanne and the Vaud University Hospital Centre (CHUV) in their contribution to this work, with which the École polytechnique fédérale de Lausanne and the University of Geneva are also associated. The ISREC foundation (supporting cancer research in Switzerland) has constructed a building (AGORA) on land made available by the State of Vaud to bring together multidisciplinary research teams. Start-ups have been created from all these efforts.

This convergence of efforts aimed at the public good raises central questions of governance: how should coordination between these different entities be designed? What are the risks that entities will have to face? Which organizational forms should be chosen? How much autonomy should they be given?

Governance<sup>15</sup> means the rules, conventions, principles and values that enable a community—generally an organization or group of organizations—to carry out activities, manage conflicts and develop coordination mechanisms to ensure coherent, orderly, sustainable development. For various reasons, the importance of this issue has grown considerably since the 1970s. The first of these has to do with the evolution of the principles and rules of public management. Public organizations had long been managed on the bureaucratic principles championed particularly by Max

14 One of the 26 states that make up the Swiss Confederation.

15 Governance between levels of government (Confederation-cantons-municipalities), commonly referred to as multilevel governance, is addressed in ► 4 Institutions.

Weber (► 3 Stakeholders). In the 1980s, in an essentially neo-liberal perspective, the functioning of administrative units was scrutinized in terms of their efficiency. The principles of New Public Management (NPM) embody a more entrepreneurial vision of public administration, with greater autonomy for the entities responsible for carrying out public tasks, and an expectation of results rather than processes. There has been a shift from a conception of the state as an actor and producer of services towards a state that regulates activities and services produced by third parties. This conception of public administration, more prevalent in English-speaking countries, has also fostered the development of additional requirements imposed on administrative systems, such as transparency and accountability. Administrative units are thus increasingly required to respect principles whose application can be contradictory: fairness, respect for procedures, effectiveness and efficiency, transparency, accountability and so on. As a result, it is important to clarify the rules governing competence, autonomy and communication, so that the administration can carry out its activities with clarity.

A second reason is that many public services are produced within a network (► 3 Stakeholders). Responsibility for the entire service lies not with any single actor, but with a whole range of public and sometimes private actors, who must coordinate their efforts. Sometimes, their interests do not converge, and major differences can arise. The implementation of regional-development policies is a good example. Organizations created around a territory<sup>16</sup>, which does not necessarily correspond to an administrative unit, can bring together municipalities, associations of municipalities, private associations and private actors, whether profit-making or not. It is therefore important to establish clear rules regarding the setting of objectives, decision-making processes, financing and control.

A third reason for the increased importance of governance in public action is the multiplicity of possible organizational and legal forms. For nearly all of the 20th century, most public services were provided by administrative units or entities specifically created by the legislator, usually autonomous establishments under public law. Since the 1980s, executive or legislative authorities have chosen to delegate the provision of these services to bodies that sometimes have distinct legal forms. For example, the university hospital centre in Lausanne (CHUV) is a service of the department of health, the university hospitals in Geneva (HUGs) are an autonomous establishment under public law, while Lucerne Cantonal Hospital (LUKS) is a limited company. The autonomy conferred on these public organizations is a question of organizational governance, not of the provision of services which, in clinical terms, are similar.

16 The Communauté régionale de la Broye (Coreb) is a regional-development organization that brings together the AVRBV (Association vaudoise région Broye Vully) and Ascobroye (Association fribourgeoise des communes de la Broye) associations, as well as private members ([www.coreb.ch](http://www.coreb.ch)).

This contribution begins by describing the various possible modes of governance for the provision of public services, with a presentation of the link between the mode of governance and organizational and legal aspects. A more normative approach follows to highlight trade-offs in the various governance and organizational choices. It concludes with a look at future prospects and challenges.

## 8.2 Key points of governance

### 8.2.1 Possible modes of governance

Modes of governance for the provision of public services are set out in Table 8.1.

Modes of governance	Doing			Getting done	
	Governance models	Classic administration	Internal contracting	Handover to autonomous entities (agencies)	External contracting
Legal and organizational forms	Administration	Target agreements, public-service mandates	Autonomous establishments, foundations, limited companies with (mainly) public capital	Forms provided for in the Code of Obligations	Contract or joint venture between the public and private sectors

**Table 8.1** Modes of government

Among modes of governance, we can broadly distinguish those that enable public services to be provided in-house (“doing”) from those that outsource them to the private sector (“getting done”). A simple example is snow clearance on public roads. This public task can be carried out by road-service departments (“doing”), but can also be entrusted (“getting done”), for example in small to medium-sized towns, to private contractors (farmers, transport companies, etc.).

The classic administrative model is still the most widespread, with tasks performed by an administrative unit. Services are provided by entities directly subordinate to an executive authority. These units have no legal personality, and their budget is drawn from the state budget. The rules that apply are those of bureaucratic administration, applied hierarchically.

Internal contracting can take place between an executive authority and an administrative authority, and can take the form of public-service contracts/mandates or target agreements. The Federal Administration’s new management model

(NMG), introduced in 2017, favours the responsibility of administrative units in the provision of services, while increasing latitude in the use of resources (performance agreements, budget envelopes, etc.). In the same vein, the budget of the State of Valais includes a political performance mandate for each department, which includes political objectives to be achieved, priority measures, indicators for assessing the achievement of objectives, and the corresponding resources made available.

The classic form of agency is the creation of a legal entity to perform public tasks, within a specific legislative framework. For example, Fribourg canton made its automobile department independent by creating an “autonomous establishment under public law” (Office de la circulation et de la navigation, OCN). Its tasks differ little from those of automobile departments in other cantons, but the way it operates differs. Financially independent, it has to cover all its costs, can borrow from banks, invest without going through the state budget, and derogate in part from the law on state personnel, while remaining administratively attached to the Department of Security, and Justice and Sport (DSJS).

Contracting also takes place beyond the state’s borders. This is the “getting done” principle. Here, the legislative and executive authorities define the services and access conditions, while implementation is entrusted to private entities. In Switzerland, unemployment insurance funds provide a very good example. Unemployment benefits are governed by federal law (Unemployment Insurance Act, UIA), which also stipulates that the cantons must have a public fund accessible to all (federalism of execution principle). The act also allows employers’ or workers’ organizations to set up private unemployment insurance funds (the main unemployment insurance fund in Switzerland is that of the UNIA trade union). The performance of a public task can thus be entrusted to public and private organizations which compete with each other insofar as they are remunerated primarily on the basis of the services delivered.

A final governance model is known as a public-private partnership (PPP). The state asks a private company to design, finance, build and manage an infrastructure for the provision of public services. In return, the government guarantees a pre-defined payment<sup>17</sup>. The Neumatt PPP in Burgdorf in Berne canton is a good example. The 25-year contract, signed in 2009 by the canton of Berne and the private project company Zeughaus PPP AG (made up of Marti Holding AG, BAM Deutschland AG and Hälgi Facility Management AG), covers the design, construction, financing and maintenance of a new complex comprising a 110-bed regional prison, four administrative centres, a warehouse and an underground car park. Total investment for this project amounted to CHF 150 million. Under the contract the private project company, which is responsible for all tasks except those directly related to the prisoners, receives an annual contribution from the canton.

17 There are also PPPs in which the private operator’s remuneration comes not from the state, but from the users of the service (see Athias et al. [2019] for a fuller description of the different types of PPPs).

Apart from the modes of governance set out in Table 8.1, the state can also intervene unilaterally through rules that apply equally to all providers in the sector (in other words, regardless of the governance choices made). When the state finances activities in the health, education, culture or sport sectors, it lays down rules for service providers, set out in legal provisions. For example, quality of life in Switzerland’s nursing homes is governed by quality standards set out in cantonal regulations.

## 8.2.2 Choice of mode of governance

After the above descriptive review of the various possible modes of governance, the question naturally arises as to which one to choose. This question is linked to the more general question of “doing” or “getting done”, which was addressed in the work of Ronald Coase (1937) and Oliver Williamson (1975)<sup>18</sup>.

### Two main coordination mechanisms: price versus hierarchy

What is the difference between “doing” and “getting done”? The answer lies in the coordination mechanism: within an organization, the coordination mechanism is the hierarchy<sup>19</sup> (through the employment contract and rules of subordination), whereas between an organization and its outside partners, coordination is mainly based on price. This is how, for example, we can distinguish the relationship an organization has with an employee from that which it has with a freelancer.

It should be noted, however, that other coordination mechanisms can complement price-based coordination, such as contractual clauses that stipulate how partners must adapt to unforeseen events, or that ensure the continuity of the relationship (e.g. exclusivity clauses). These are hybrid modes of governance, in that both coordination mechanisms (price and authority) are present.

Each mode of governance has its own coordination mechanism, which is what determines its ability to manage a given service and minimize the costs involved.

### Production costs versus transaction costs

When only production costs are considered, the price-coordination mechanism is often assumed to do better than in-house supply with its associated hierarchical coordination mechanism. In other words, the “getting-done” solution would seem to provide an advantage in terms of production-cost minimization because of strong incentives for efficiency and potential competitive pressure to penalize poor performance. Another potential advantage lies in the market’s ability to

18 Ronald Coase and Oliver Williamson were awarded the Nobel Prize in Economics, in 1991 and 2009 respectively, for work leading to the development of transaction-cost theory. This is the only theory that can answer the question about the optimal mode of governance for public services, in that it is the only one that distinguishes between “doing” and “getting done”.

19 As Coase (1937: 387) points out: “If a workman moves from department Y to department X, he does not go because of a change in relative prices, but because he is ordered to do so.”

aggregate demand, leading to economies of scale, whereas a public entity may be constrained by its size.

But the market's advantage in terms of productive efficiency can be called into question when the specific nature of public organizations is taken into account. This is because the primary objective of public organizations, unlike for-profit organizations, is to serve a mission (Wilson 1989; Tirole 1994; Besley & Ghatak 2005; Athias 2025), that is, to produce goods and services that benefit everyone without the possibility of exclusion (these are public goods and services ► 2 Essential functions). Some of those involved in the production of public goods and services take this collective impact into account when choosing how much effort to devote to their work. These “motivated<sup>20</sup>” workers are inclined to increase their efforts without financial compensation, leading to productivity gains at the organizational level (Perry & Wise 1990; Besley & Ghatak 2005; Athias & Wicht 2024).

Moreover, when considering efficiency, we need to take into account not only production costs, but also transaction costs—the costs incurred by using price as a coordination mechanism, which are often overlooked. Transaction costs are a direct consequence of the fact that contracts are incomplete. This is because, since actors have limited rationality (they are rational, but their cognitive capacities are limited), they are unable to perfectly assess all future performance trends in an uncertain world. Renegotiations will therefore be necessary to adapt service provision to unforeseen events. During these renegotiations, actors may behave opportunistically, seeking to exploit contractual weaknesses to appropriate a larger share of the gains. This type of behaviour is all the more difficult to sanction when there is a relationship of dependence between actors. As a result, transaction costs can be very significant. These are the costs—monetary and above all non-monetary (direct and indirect)—that can arise *ex ante*, before the contract is signed (costs of drafting and negotiating the contract, guarantees, etc.), but above all *ex post*, after the contract is signed (costs arising from poor suitability of the contract, renegotiations, implementation and monitoring costs, and possible breach of contract).

### Determinants of transaction costs

One of the major contributions of transaction-cost theory is to demonstrate that, although these costs are unobservable, their magnitude can be estimated on the basis of the (observable) characteristics of the service in question. These characteristics, which constitute the determinants of transaction costs, are three in number:

- Asset specificity: can the necessary assets be redeployed at no cost for another use?

20 Examples are physicians seeking to save lives, researchers to advance knowledge, judges to promote justice and soldiers to defend their country.

- **Uncertainty:** is it easy to anticipate future demand or future operating conditions for the service in question?
- **Complexity:** can service quality be easily observed, measured and verified by a third party?

The greater the asset specificity, the more the contracting parties are locked into a situation of dependence, which increases the risk of opportunistic behaviour, and therefore transaction costs. Similarly, uncertainty often means that renegotiation is required to adapt public services to changing circumstances. Lastly, the more complex the service, the more the existing supplier organization can cut production costs to the detriment of service quality without being penalized. Transaction costs, arising out of the discrepancy between the service provided and that expected, will therefore be all the higher.

The optimal mode of governance is one that minimizes total costs: transaction costs as well as production costs. With higher transaction costs, the hierarchical coordination mechanism becomes preferable, with its powerful means of control and its internal mechanisms for conflict resolution and decision-making in unforeseen situations.

### 8.2.3 Choice of legal and organizational form

Once the mode of governance has been chosen, the question of which legal and organizational form to adopt depends primarily on the incentives to be given to service providers. As highlighted above, one of the market's advantages in terms of productive efficiency lies in strong incentive schemes.

Similar incentives could be introduced within public administrations to encourage employees to increase their efforts<sup>21</sup>. However, such schemes are often very difficult to design, given the multiplicity of decision-makers and the objectives assigned to public administrations (Tirole 1994). One solution is to create public agencies charged with the execution of a task including performance targets. This is known as the phenomenon of agentification. The power of incentive schemes depends on the way in which the state exercises its responsibility as owner, directly through its organizations, and indirectly through its representatives.

21 The problem that arises is the influence of asymmetric information on employees' level of effort (Laffont & Martimort 2002). As Laffont (2000: 127) notes: "The government is incapable of observing the effort levels of its agents. At most, it observes results that depend not only on effort, but also on a set of random circumstances, which make interpreting the results difficult. Poor results can be due to a lack of effort, but also to unfavourable circumstances. The absence of incentives (for effort) is characterized here by remuneration that is independent of performance. This is optimal when agents work in good faith: a good level of effort can be taken for granted, and they are exposed to no unnecessary risks. In contrast, if agents have private objectives, they must be given incentives to work hard by making their remuneration dependent on their results."

Unlike countries such as France, which have categories of public establishments<sup>22</sup>, Swiss public authorities use, in addition to the status of “autonomous establishment under public law” created by statute, the legal forms provided by the Code of Obligations to create agencies:

- Simple partnerships: many structures are created through an agreement between several public entities; they have no legal personality and are generally managed by one of the partner public entities. In the higher education sector, many cooperative ventures between institutions take the form of a simple partnership.
- Autonomous establishments under public law: the Hôpital Riviera-Chablais was recently created on the basis of an intercantonal agreement and has a legal personality.
- Associations: the cantons of Fribourg and Jura have created the iGovPortal.ch association to facilitate a unified, coordinated “eGovernment” strategy between a canton and its municipalities. Other cantons such as Graubünden, St. Gallen and Solothurn have joined them.
- Foundations: these can be public-law foundations such as Pro Helvetia, or private-law foundations such as the Manufacture-Haute École des arts de la scène.
- Limited companies: RUAG Holding AG is an aerospace and defence company whose sole shareholder is the Swiss Confederation.

Within these different forms of agency, the choice of a legal form and its organizational implications often depends on several criteria, even if ideological and political positions always feature strongly in the corresponding debates. One criterion involves the nature of the activity. If the activity is commercial and subject to the laws of competition, the classic limited-company form should be favoured. This is because such a structure must be able to act with the same resources as its competitors, or risk being either advantaged (state responsibility) or hindered (lack of flexibility regarding salaries, for example). Economic risk is another important criterion. Many activities present significant risks whose financial impact must be limitable. For example, the limited-company structure of Agno airport (Lugano Airport SA with capital of CHF 4 million), owned by the canton of Ticino and the city of Lugano, was put into ordinary liquidation in May 2020, and employees were able to be made redundant. In contrast, abolishing an autonomous establishment under public law would have required the involvement of the corresponding legislative authorities. Political control and accountability rules are also key criteria in the choice of a legal form. The closer the nature of the activity is to the state’s sovereign tasks, or the more politically sensitive it is, the more the authorities will want to ensure that they can

22 France distinguishes between public administrative establishments, public industrial and commercial establishments, independent administrative authorities, public interest groups and departments of national competence. In addition to these categories, there are public enterprises under private law and semi-public companies.

control the entity and be able to obtain any information they require. Both the conventional solution and the creation of an autonomous establishment under public law allow the necessary arrangements to be made relatively easily; the process is more complex with the forms provided for in the Code of Obligations.

In conclusion, to understand the legal form chosen for agencies, one must be aware of the historical context in which they were created. While most of the cantonal banks created at the end of the 19th century are still autonomous establishments under public law, their governance is currently more akin to that of limited companies. In contrast, the Swiss National Bank is a limited company founded in 1906 with both public and private shareholders, but whose activities are governed by the National Bank Act of 2004.

### 8.3 Future prospects and challenges

We have discussed the different modes of governance for the provision of public services, and highlighted the trade-offs involved, which are technical and not ideological. Thus, while it is now common practice to carry out cost-benefit analyses when choosing investments, the same should also apply to choices of governance, since each mode of governance has its own advantages and disadvantages. It is important to understand that there is no perfect solution to the governance problem, no one optimal mode of governance: it all depends on the service in question and its environment. This message runs counter to the aspirations towards standardization that we see in practice.

Also, certain characteristics of public services change over time, in response to technological innovations for example, and this may call into question the mode of governance initially chosen. Similarly, in an increasingly globalized and interconnected world, the complexity and uncertainty surrounding the provision of some public services (particularly in the fields of health, education and the environment) are intensified. However, as emphasized in this contribution, where asset specificity and high levels of complexity and uncertainty are present, the preference should be for more hierarchical modes of governance, with their greater capacity for control and adaptation.

Beyond considerations of the technical aspects, public-sector organizations are faced with another challenge: that of preserving their mission as an organizational objective, distinct from the goal of maximizing profits. Although, in the collective unconscious, private for-profit organizations always outstrip public organizations in terms of organizational efficiency, public organizations can rely on motivation rather than (costly) monetary incentives to generate a given level of effort. The challenge for

every public organization is therefore to achieve the closest possible match between its employees' motivation and its mission, without lapsing into bureaucratic conservatism or resistance to innovation. The tendency over recent decades to give public organizations profitability objectives could therefore prove counter-productive.

## Key concepts

- Accountability (*accountability/imputabilité, Rechenschaftspflicht, responsabilità*): the obligation to answer for the performance of a task to an authority and, more generally, to all stakeholders.
- Agency (*agence, Agentur, agenzia*): a public entity carrying out public tasks, enjoying considerable management autonomy but with a requirement to achieve performance targets.
- Motivation (*motivation, Motivation, motivazione*): an individual predisposition to take into consideration the overall value of the good or service produced for society in deciding what level of effort to put into producing it.
- Opportunism (*opportunism, Opportunismus, opportunismo*): opportunism by actors involves disclosing incomplete or distorted information in order to appropriate part of the benefits that were supposed to accrue to the other party to the exchange. This hypothesis is advanced not with the idea that all actors are necessarily opportunistic, but that they can potentially act opportunistically. Thus, the choice of a mode of governance cannot be made without taking it into account.
- Transaction costs (*coûts de transaction, Transaktionskosten, costi di transazione*): the costs of using the market to complete a transaction. They break down into *ex-ante* costs, but above all *ex-post* costs (i.e. before and after a contract is signed). *Ex-ante* transaction costs are those associated with finding a partner and drafting, negotiating and securing an agreement. *Ex-post* transaction costs, on the other hand, include control costs, renegotiation costs, costs arising out of a discrepancy between the performance delivered and that expected and possibly the costs of breaking off agreements. Transaction costs are mainly non-monetary and unobservable.

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