Governing France

The title of this book is *Governing and Governance in France*. If modern day France can be geographically located in a precise manner, there is no easy agreement about the concepts of governing, government or governance. Some basic definitions assist conceptual and empirical clarity. For French political scientist Leca (1996) governing ‘is a matter of taking decisions, resolving conflicts, producing public goods, coordinating private behaviour, regulating markets, organising elections, distributing resources, determining spending’. Governing is the core business of *government*, which claims to speak with an authoritative voice and to embody a superior legitimacy to other interests or forces in society. For Le Galès (2002: 17) government ‘refers to structures, actors, processes and outputs’, while *governance* ‘relates to all the institutions, networks, directives, regulations, norms, political and social usages, public and private actors that contribute to the stability of a society…’. In this basic framework, governance represents new forms of coordination – or of governing – that go beyond the traditional confines of government. But what is government and how does it exemplify itself in the ‘strong state’ of France?

**Governing as government**

In the definition given by Le Galès, the four key features of government were identified as structures, actors, processes and outputs. Though there are semantic difficulties with these terms, a credible definition of government must integrate an understanding of each of them. We would add a fifth variable: namely institutions, a central component that provides meaning between structures and actors.

*Structures and institutions*

The concept of structure is an essentially contested one. Some research traditions, such as constructivism, reject its existence altogether, or
at least challenge the existence of structure as a separate category from agency (Christiansen 2001; Rosamond 2001; Hay and Rosamond 2002). Structure is what actors make of it and portray it to be. Most research traditions accept some form of structuralism, even those such as discourse analysis that are rooted in the power of language and symbols. In its strongest sense, structure signifies deep meta-level variables that determine (or at least strongly influence) the shape of contemporary polities and politics. The most obvious causal variables would include, *inter alia*, the underlying socio-economic system and social class relationships, non-economic cleavages (religion, territory, ethnic identity), the weight of key historical junctures and events and the persistence of competing belief systems. Identifying these macro-structural variables does not necessarily mean predicting any relationship between them or indicating the likely direction of any change. Meta-narratives can provide a rich context for understanding modern French government, but they are expressed at a very high level of generality.¹

Middle-range institutional analysis allows more scope for empirical investigation than structural meta-narratives. In the rich but rather inconsistent new institutionalist tradition, institutions are understood either as organisations, as beliefs, as history, as human action, as forms of appropriate behaviour, or as some combination of these (Hall and Taylor 1996; Guy-Peters 1999). In the version popularised by March and Olsen (1989), new institutionalism stresses the relative autonomy of political institutions. Institutions are neither a mirror of society (the behavioural critique), nor merely the site for individual strategies (as in the rational actor paradigm). Institutions give meaning to interactions and provide the context within which interactions take place. For the purposes of describing the model of government, we

¹ Several competing, credible narratives can account for deep structural features of the French polity. Economic meta-narratives focus on the conformity of the political system with the underlying economic structure. Ideational meta-narratives identify deep ideological cleavages that came to a head at critical junctures, such as the ideological rivalry between the Catholic Church and the Republic throughout the nineteenth century (Hazareesingh 1994). Other meta-narratives have emphasised the importance of spatial and geographical variables. Rokkan and Urwin (1982), for example, identified three types of European state: the strong empire-nations of the Atlantic west; the economically weaker states of the eastern plains; and the states of imperial central Europe, unified only in the nineteenth century (Flora, Kuhnle and Urwin 1999).
interpret institutions as intermediary phenomena between structures and actors. Institutions are understood here in their original form as legal entities vested with formal competencies and a high degree of organisational coherence (implying shared beliefs and understandings of appropriateness). Institutional continuities in France are well exemplified by the importance of constants such as the professional bureaucracy and the system of public law, two examples that are now considered.

The study of the development of the professional bureaucracy is usually linked with the German sociologist Max Weber. For Weber, the development of the bureaucratic state was a general feature of capitalist development, with an impartial state essential to provide legal security for contracts. The role of the bureaucracy is to ensure that rules are respected and that predictability, regularity and conformity to uniform standards are achieved. In the case of France, the bureaucracy came into existence before capitalist take-off. French bureaucracy has its origins in the Napoleonic model of administration carefully crafted at the beginning of the nineteenth century. Under Napoleon, the bureaucracy was viewed as a positive force that would embody the power and legitimacy of the French state and the general interest of the nation as a whole (Stevens 2003). These images have been remarkably persistent. Senior French civil servants view themselves as agents of state power who derive their legitimacy from defending an impartial and legalistic conception of state intervention against particularistic interests (Rouban 1995). Middle-ranking civil servants are, if anything, even more attached to the codes and written procedures that secure their social and professional status (Jones 2003). Though Weber emphasised the superiority of the bureaucratic mode of organisation over those based on tradition and charisma, the influential French organisational sociology school has highlighted the sub-optimal performance of the French bureaucracy as a result of vicious circles (Crozier 1963), loyalty to technical and administrative corps (Friedberg 1993) and the existence of zones of uncertainty within organisations (Crozier and Friedberg 1977).

Another middle-level institution is the system of public (administrative) law. Until the 1870s, the French legal system developed in a manner consistent with the overarching liberal economic framework, based on limited state functions, the prevalence of private contracts and detailed legal codification (in the Napoleonic code). A separate
branch of administrative law developed from the 1870s, founded upon the legal doctrine of the state as a public servant (Chevallier 2003b). Public law theory emerged to regulate the activities of an increasingly interventionist state in the late nineteenth century. Public law rests on the key principle that the state should be treated differently from private citizens, because it is both vested with public authority and delivers public services. Even the most conservative of public lawyers have had to accept the calling into question of the Weberian model of government, based on authority, hierarchy and a powerful bureaucracy.

**Institutions and actors**

‘Government’ signifies the political direction of the state machinery, hence the role of political leadership and the chief political offices. Early observers of the French Fifth Republic emphasised the strength of executive-dominated governments, were fascinated by the office of the presidency, yet worried that there were relatively weak political and judicial counterweights to a powerful executive authority (Williams 1964, 1969; Wright 1978). The hyper-presidentialist narratives of the first two decades of the Fifth Republic gave way during the next two decades to more balanced accounts, the centrality of the presidency having been challenged by repeated episodes of ‘cohabitation’, variable configurations within the core executive and changing leadership styles in an age of closer European integration (Hayward and Wright 2002). The first few months of Nicolas Sarkozy’s presidency appeared to renew earlier presidential traditions and to question the utility of preserving a twin-headed executive, a theme developed in Chapter 7.

Long before political scientists set about theorising the nature of institutionalism, there was a strong tradition of empirical institutionalism in France. Empirical institutionalism focuses upon the role of formal rules in determining outcomes, shaping actor strategies and explaining performance. This trend is perhaps best typified by Maurice Duverger, whose laws about the role of electoral systems in shaping party systems sparked a vigorous debate about the relative importance of institutional and sociological variables in electoral sociology (Duverger 1964, 1986; Benoit 2006). Duverger’s subsequent
conceptualisation of the Fifth Republic as a semi-presidential system similarly excited a generation of scholars interested in comparative institutional design, and opened new comparative perspectives for measuring institutional influences (Elgie 1999). The focus of such work has been on formal political offices (presidents and prime ministers, legislatures, courts), the rules of the game (electoral systems) or institutional configurations (the semi-presidential model), with a strong methodological belief that institutional arrangements matter. Writers in the empirical institutionalist tradition have performed valuable work by studying key political offices, such as the president (Hayward 1993), the prime minister (Elgie 1993), the parliament (Williams 1969; P. Smith 2006), the Constitutional Council (Stone 1992), the prefects (Machin 1976) or local government (Ashford 1982). While acknowledging this body of work, formal descriptions of political institutions will not be a central feature of this book, except in so far as they directly relate to the arguments underpinning France’s governance. Rather than specific political institutions, we reason in terms of the state, statist traditions and challenges to these traditions.

Government is also the product of actors operating in more or less strategically opportune ways. If political leadership has been under-studied and specified, the same conclusion is not valid for the elites at the heart of the governmental machine. The French state tradition has been characterised by a close interpenetration of political, administrative and economic actors, encouraged by modes of elite selection. In the orthodox model, the state tradition in France was best exemplified by the role of the grands corps. The corps are bodies without obvious parallels in the British or American contexts. Rather than designating an institution or a government department as such, the term is used to describe the different state grades to which all civil servants must belong. In traditional representations of French elitism, members of the grands corps perform a disproportionately important role. In the orthodox model, the key technical body was the Highways and Bridges corps (Ponts et Chaussés); Crozier and Friedberg (1977), Friedberg (1974) and Thoenig (1973) all provide detailed accounts of the influence of the role of the Ponts et Chaussés in determining technical policy choices. In addition to this technical corps there are the three leading administrative grands corps, all concerned with controlling and checking the work of other civil servants. The Council
of State lies at the apex of France’s system of public law. The Financial Inspectorate undertakes financial inspections of government departments and other public administrations. The Court of Accounts publishes annual reports on the uses (and especially abuses) of expenditure by organisations and programmes funded from the public purse.\(^2\) Whether the corps have been able to resist exogenous and endogenous pressures is a measure of their ability to adapt strategically to changing circumstances: the Council of State has been much more successful than the Highways and Bridges corps in this respect.

Even relatively straightforward descriptions of government usually allow for the delivery, administration and regulation of some public services by non-governmental actors, such as professional associations in the legal and health sectors. More formalised neo-corporatist models include the ‘social partners’ as co-producers of public policy: organised labour, business and professional interests are fully integrated into the decision-making machinery of most continental European welfare states. Political party actors are sometimes understood as governmental actors, sometimes not. In practice, rigid and strict distinctions between public administration and party politics are unrealistic. The coexistence of party politics and administration is a routine feature of every French government department, where the minister’s cabinet is in part appointed on partisan grounds, a process that is understood (but resented) by the permanent career civil servants. Moreover, the top 300 or so civil service posts are political appointments, decided in the Council of Ministers.

Bézès (2006) identifies a number of powerful structural characteristics of the French state that make coordination between these actors difficult. These include the strength of departmental traditions, the weakness of the office of prime minister faced with well-entrenched ministers, the delivery of most governmental services either by local authorities or through the complex social security system, the tradition of competition between rival corps within the state and the disaggregating effects of party politics. These centrifugal pressures are more than a match for those whose task it is to coordinate the activity of government.

\(^2\) Interview, Court of Accounts, July 2004. Though it enjoys great prestige, the finite range of sanctions it possesses limits its effectiveness (as does rivalry with the Financial Inspectorate).
Process: the case of coordination

Formal descriptions of governmental actors in terms of their constitutional roles and responsibilities rarely capture the behavioural complexity at the heart of government. On the other hand, powerful parts of the governmental machine derive their legitimacy from the rigorous respecting of formal rules and procedures. Monitoring the processes of government and their correct implementation provides a powerful source of legitimacy for key institutions at the heart of government, the Council of State, the Constitutional Council and the General Secretariat of the government being the most important.

In a formal sense, political coordination is the province of the French prime minister and governmental coordination is carried out by the General Secretariat of the government formally attached to the prime minister’s office (Chenot 1986). But even full mastery of bureaucratic circuits can provide only a limited form of administrative coordination. There are several rival claims for the function of political coordination. The prime minister is formally charged with political coordination, but the effectiveness of such coordination is highly contingent, depending upon the actors in question, the prestige of the premier, the support of public opinion, the strength of other ministers and, especially, the view of his own role adopted by the president himself. The Élysée palace (the home of the president) offers a form of macro-coordination and political leadership, with some presidents (Giscard d’Estaing, Mitterrand, Sarkozy) reserving for themselves the arbitration of the most divisive issues and ensuring that their staffs were present at all key interministerial meetings. The influence of the presidential staff has been stronger at some times in recent French history than at others. Under President Sarkozy, the General Secretary of the Élysée, Claude Guéant, adopted a far more active profile than any of his predecessors.

Legal and administrative coordination is – in theory – ensured by the Council of State. More than any other institution, the Council of State represents the centrality of the law in the French state tradition (Latour 2004). In textbook descriptions, the Council of State performs two distinctive, arguably conflicting roles: as a legal advisor to the
government of the day and as the highest administrative court in the land. These roles are less separate than often described. The Council’s legal advice to the government in practice has a binding character which is drawn from its own jurisprudence as the highest administrative court in the land (Del Prete 2004). Before French government bills (and decrees) are considered in the Council of Ministers or the National Assembly, they must be submitted to the Council of State for an appreciation of their legality and administrative feasibility. One key complaint voiced in interviews concerned legislative inflation. There are far too many laws, regulations and directives, and they are poorly drafted.\(^5\)

Through its use of case law, the Council of State has adopted a standard-setting role. Rather like the Constitutional Council, the Council of State edicts ‘general principles of law’, which go beyond the provisions of any particular legislative act or decree. The effect of this case law is to enshrine a system of judicial review. The Council of State can not only strike down government bills (as in 2004 over a proposed reform to the electoral system for the regional elections), but has also claimed the right to decide the conditions under which a bill will or will not be declared constitutional. Such empire-building is viewed with distaste from within the Constitutional Council,\(^6\) whose own province is that of constitutional conformity (Stone 1992). The Constitutional Council considers all organic laws (those relating to the working of the constitution), as well as those ordinary laws referred to it by the opposition parties. In practice, around one-half of major bills will be referred to the Council. The Council must make known its decisions on a bill within one month of being asked. In the case of the budget, the Council has ‘eight days, for over one million documents’.\(^7\)

Initially dismissed as an institutional lightweight, the Council has revealed its real political muscle since the early 1980s, constraining governments, among other decisions, to review nationalisation programmes (1982), revise electoral reforms (1986, 2004), to reject far-reaching reforms in Corsica (2002) and to change the constitution to permit ratification of the EU treaties (1992, 1997, 2005). According to one insider, however, there has been a tendency to exaggerate the

\(^{5}\) Interview, Council of State, January 2006, May 2006.

\(^{6}\) Interview, Constitutional Council, July 2006.

\(^{7}\) Interview, Constitutional Council, June 2002.
influence of the Constitutional Council. Governments can change the constitution to get their way.8 Above all, the Council has suffered from the growing influence of the Council of State in constitutional affairs and the loss of national influence to the European Court of Justice in matters of EU competition policy and to the European Court of Human Rights in issues of citizenship.9

Outputs

If ‘government’ involves ruling or governing something, then France is a heavily governed society. Central government is involved in the direct delivery of some public services. It closely supervises the provision of social security and the operation of local government. It has expanded its remit more in France than in many other countries and has to manage a record level of public debt as a consequence.

The nineteenth century was a period of limited government, state activity being confined for most of the century to the core functions of law and order, security, foreign policy and taxation. By the end of the nineteenth century, the role of government had expanded to include the provision of universal primary education, road-building and postal services in its remit, these public services usually being administered at a local level. The trend to more interventionist governments was due in part to the activism of local councils, strengthened by the 1884 Municipal Reform Act. Communes took over a range of activities from as early as 1905 (slaughter houses) and 1913 (local railways) (Chevallier 2003b). In the interwar period, local councils were charged with delivery of a range of local public services, such as waste management, water, urban transport, heating, funeral parlours and fire-fighting (Lorrain 1991, 1993). In most cases, management of these services was delegated from central to local government and from local government to private service providers (Gaudin 2002). Thus, the French version of the emerging dual state combined considerable local diversity, municipal activism and the delegation of public service delivery to private operators.

8 On 19 February 2007, for example, three constitutional amendments were approved on the same day by the two houses of the French parliament sitting together as Congress at Versailles.
9 Interview, Constitutional Council, July 2006.
The development of a more uniform mode of service delivery is a feature of the post-war period. After 1945, government became more directly involved in delivering economic public services and expanded its activity into the domain of public services, social protection, public health and housing. Though new public services were introduced by central government, they were often delivered by local government, through the local branches of social partnership agencies or by the field services of central government departments. In the decades preceding decentralisation, local authorities and/or state field services assumed increasing responsibilities for secondary education, social assistance, housing and provision for the handicapped, as well as responsibilities for care of the elderly and child protection. Cultural services also expanded considerably in the post-1945 period (Thuriot 2004). The state takes seriously its responsibility for protecting France’s cultural patrimony – museums, libraries, historical monuments and archives – a competence it has jealously safeguarded, notwithstanding a wave of decentralisation reforms. In the post-1945 period, the state also increased its intervention in research and higher education, training, youth and sports, tourism, leisure and environmental protection, the delivery of most of these services involving a multi-organisational operational network. One of the paradoxes of the debates about governance is that the capacity of the state has been challenged at the same time as government, understood in its broadest sense, has never performed so many functions.10

In this overview, the concept of government covers an array of different meanings. In the model of governing as government, its traditional defenders consider the state as a moral authority, above specific interests in society. Reduced to its core, government in France rests upon: the legitimate use of force; a tradition of strong central authority which gives direction to other public and private actors; a doctrine of undivided political sovereignty (republicanism); a clearly affirmed territorial hierarchy; established constitutional rules and a hierarchy of legal orders; the development of a powerful bureaucracy, combined with a degree of multi-organisational flexibility in terms of service delivery. The public law approach continues to defend government as providing an overarching normative framework and a monopoly use of force.

10 The proportion of state funding as a proportion of GDP has risen from around 10 per cent in 1914, to 30 per cent in 1939, to around 45–50 per cent today.