PUBLIC LAW IN A MULTI-LAYERED CONSTITUTION

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sovereignty and territory. In this way governmentality is directing us to a whole series of heterogeneous fields of government activity where various bodies, authorities and forces have sought to govern 'populations' and their conduct through a whole range of strategies and techniques. Governmentality is thus widening the scope of constitutional study far beyond the traditional institutions and figures such as Parliament, the Prime Minister and the senior judges. It is taking us beyond formal statute and case law and even the more informal practices and understandings of the major figures within the formal constitution. It is directing study to a space of government that encompasses the traditional political institutions but extends far beyond them to include a whole range of other discourses and vocabularies, mechanisms and strategies, rationalities and technologies.

This widening of the remit for constitutional lawyers may seem to reflect, at least in part, the move from 'government' to 'governance'. Almost everywhere, and even among many constitutional law scholars, there has been a realisation that the nature and location of government has changed. Much of this is captured in the idea of a move from government to governance. Figure 7.1 indicates elements of the changing focus for constitutionalists.

Components of government and democracy	The traditional state (and formal democracy)	The 'modernised' state (and organic democracy)
Guardian of Democratic values	Parliament (Demos); Constitution; Bills of Rights; tradition and convention	Parliament (as meta sovereign, guarantor of process); international standards and enforcement mechanisms
Key Agents/ Institutions	Parliaments; political parties and politicians; government including ministries, public servants, welfare bureaucracy, local authorities;—'Big Government'	Quangos, executive + independent agencies; private + voluntary sectors in 'partnerships'; civil society including single issues groups, NGOs; 'democratic citizens'; international/ transnational bodies; 'government as enabler, facilitator'; 'cross-cutting' task forces + 'tsars'
Resources for Governance	Taxation, central national exchequer; local authority rates and grants	Tax revenues funding various resource centres including local, national and european levels of government + distribution across functional lines; private and charitable, matching funds, private finance initiative
Policy Aims/ Core Activities	Macro-economic management; complete welfare provision; managing the 'national interest'	Correcting market failures; regulation and co-ordination of other providers; risk management; management of 'wicked issues' residual direct welfare provision function

Role of public or citizen	Taxpayer, voter, passive recipient of 'entitlements'	Active customer re service delivery; active citizen or stakeholder re policy development
Sphere of public debate and decision	Parliament + assemblies and councils; ('the usual channels'—press, etc.); a single 'national' public sphere	Formal (parliaments and assemblies) and informal—multiple public spheres; self-organising agents; a globalised public sphere
Deliberative form	Parliamentary deliberation, national debate; devolved assemblies; commissions and committees— consensus building	Multiple—open access; multi-level, European Parliament, WTO etc; local assemblies and parliaments; organically constituted local and interest-based forums, e-based; discursive and participatory
Process	Representation (electoral nexus), consultation of politicians with public, liaison with officials— co-operation	Involvement (non-electoral representation?) of civil society, participation of citizens, NGOs and government—in partnership; 'enabling'
Modes of Action/ Instruments	Taxation and public spending; budgets and formal contracts; civil service action; formal legal norms, statute law and case law of domestic courts	Agreements, compacts and concordats; licensing + franchising; networks; 'project-based'; 'contracts'; rule-making, standard + target setting; regulation; incentives—local Public Service Agreements, performance pay; peer review; monitoring + enforcement
Accountability Mechanisms	Direct—visibility of key decision centres, Parliament, PM and ministerial questions, ministerial responsibility; professional norms, ideas of 'public interest'	Indirect—invisibility of key decision centres, legal, consumer/contractual, market disciplines; audit + benchmark; patronage; adjudication of complaints and grievances supranational enforcement mechanisms; domestic courts adjudicating rights, judicial review
Role of Courts	Rule of law; policing boundaries and limits, legality; separation of powers; guaranteeing positive rights; correcting individual injustices; 'red light model'; law as 'imperium'	Emphasising participation, giving access, wide rules of standing; public interest litigation; ensuring information flow; judicial review— balancing rights, interpreting international standards and developing human rights; 'green light model'; law as 'community'

FIGURE 7.1: *'Government to governance': the emergence of 'modernised government'*

This involves a change in the site of government. Government does not now take place only within a single, unified national territory or by means of a unified, single system. The effects of globalisation mean that territory, like economy and culture, are increasingly multiple and plural rather than unified and national. In this context government acts not so much by simply issuing commands or making law but by developing strategies, techniques and procedures which operate across the countless, often competing value systems and concentrations of power that exist across state and non-state institutions and centres of power and expertise. Ideas of multi-level government have evolved from a simple recognition that there are layers beyond the national state to more sophisticated ideas of how power is dispersed into a multiplicity of sites, constituting nodes in a heterarchical network rather than layers in a hierarchical pyramid, which operate in a relationship of mutual influence rather than control.[11] There are also ideas emerging that the activity of government is complex and *multi-format* too. There are now many more agencies and bodies from civil society and the private sector, as well as from government and quasi-government, and these operate at every level from the local, regional, national and European to deliver both the policy and services of government. As well as formal institutions we need to examine also networks, partnerships and project groups. As Skelcher, a commentator from a public administration perspective sees it,[12] we have moved in the last four or five decades from the 'overloaded state' which attempted to manage the economy, deliver the welfare state and underwrite public sector provision through to the 'hollowed out state' of the 1980s where the delivery mechanisms for public services are reallocated to the private sector and the machinery of the state was replaced by structures at one remove from the political centre. Now we are experiencing the 'congested state' where there is a complex of networked relationships between public, private, voluntary and community actors, which has produced a dense, multi-layered and largely impenetrable structure of public action. There is now a flowering of collaborative activity involving a whole range of partnerships across the public policy agenda where government is not necessarily the lead agency. As figure 6.1 seeks to indicate, this has produced a whole new set of agencies, resources, modes of action and policy aims. It has changed the roles of citizens and courts and offered up new spaces both to find accountability and to develop participation. It has certainly changed the nature of the subject of constitutional law.

Some of this change is captured well in ideas of governance. Furthermore notions of 'good governance', promoting values of transparency, democracy and human rights, do provide something of a normative framework to begin to evaluate new forms of governance. But governmentality offers another important

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[11]   See, eg, N Bernard, *Multilevel Governance in the European Union* (2002) or M Keating's account of the 'reterritorialisation of politics' as involving 'a dual process of sub-state mobilisation and supra-state integration' and a 'search for new levels of political action' in 'Europe's Changing Political Landscape' in P Beaumont, C Lyons and N Walker (eds), *Convergence and Divergence in European Public Law* (Oxford, Hart Publishing, 2002), 7.

[12]   'Changing Images of the State: Overloaded, Hollowed out, Congested' (2000) 15 *Public Policy and Administration* 3.

dimension too. It directs us to all the indirect and persuasive controls, soft law and the strategies of government at a distance, where authorities seek to shape and control the actions of others indirectly through moulding the conditions where individuals, communities and societies make themselves up as rational, choosing, consuming and responsibilised citizens, and thereby govern themselves. While traditionally public lawyers tend to think of law mainly in terms of straightforward power—of issuing commands and imposing sovereign will—much of government power is less about the state and law and more related to engaging with the many networks and alliances that make up the chains or networks in society which translate power from one locale to another. The governmentality perspective stresses that the mentalities of post-liberal government cannot be found only in the statute book, the upper court judgment or the text setting out the meta-constitutional framework. In addition we need to look at framework documents, standards and codes, initiatives and programmes, social practices, guidelines, the outworkings of myriad schemes and the language in which all this is expressed.

This poses a challenge to legal scholarship, even in its most interdisciplinary forms. In addition to the traditional techniques such as statutory interpretation, case analysis and the toolbox of sociolegal studies (including particularly ethnography) we must develop the perspectives of governmentality. We must apply the outlook of what Foucault terms a 'history of the present' whereby we strip away the naturalness of programmes and practices and ask why did problems come to be seen in this way and why did particular solutions emerge? This involves developing a standpoint from which to view the creation of governable spaces and the production of governable subjects. Indeed we may say that where governance describes the practice, governmentality is the theory that analyses and critiques. Rose talks in terms of governmentality opening 'a space for critical thought', of how approaches within governmentality seek an open and critical relation to strategies for governing, attentive to their presuppositions and their assumptions.[13] Governmentality provides us with a perspective to see the multiform tactics of governance in ways that introduce a particular critical attitude to things that are otherwise seen as given, as natural or unquestionable. In particular, within a governmentality perspective, as Rose argues, 'programmes and technologies of government ... are assemblages which may have a rationality, but this is not one of a coherence of origin or singular essence ... To analyse, then, is not to seek for a hidden unity behind this complex diversity. Quite the reverse. It is to reveal the historicity and the contingency of the truths that have come to define the limits of our contemporary ways of understanding ourselves, individually and collectively, and the programmes and procedures assembled to govern ourselves. By doing so, it is to disturb and destablise these regimes, to identify weak points and lines of

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[13] Rose, above n 1, at 19. As Cotterrell argues, 'the strength of Foucault's work for legal scholarship has been to emphasise the ubiquity of power.... As Foucault revolutionised views of power, sociolegal scholarship should revolutionise views of law.... Law, like power should be seen as a resource operating routinely in innumerable sites and settings'. 'Subverting Orthodoxy, Making Law Central' (2002) 29 *JLS* 632, 639.

fracture in our present where thought might insert itself *in order to make a differ-ence*.[14] In this way, governmentality directs us to the detail of various technologies of government in terms of their assemblages of modes of thinking and acting and to their wider role within broader ideas of what it is to govern. It also enables us to intervene. It is important within the governmentality viewpoint that power is not seen as a top down exercise where those with most resources (particularly of course the state) marshal them and deploy the art of government to attain some overarching end. Governmentality suggests that people need to be willing partici-pants in their own government. They have choices. Alternatives are possible and resistance is endemic to power relations.[15] Power only works, and is only trans-lated from site to site or among nodes, if it is accepted (or else modified) by those who it passes through. The governmentality approach does not necessarily involve a detached observation of technologies of government but can and should urge resistance, contestation and alternatives.

In what remains of this chapter, the focus will be upon a particular technology of government, namely that relating to the programme of modernisation in general and the development of electronic government in particular. An effort will be made to examine this as an exercise in governmentality which requires us to examine the multiform tactics through which various bodies and agencies strug-gle to instantiate it. Also, this particular programme of government is contested and a critical view is offered of the programme and its assumptions. Indeed, an alternative 'technology of democracy' is outlined.

MODERNISING GOVERNMENT

The New Public Management initiatives of the 1980s and 1990s had enormous impact on the practices of public administration. The challenge of performing additional tasks within a declining budget forced government to develop new ideas in order to increase revenues or reduce costs. Cost transparency and cus-tomer orientation became strategic goals. It became axiomatic that the.formal state machinery should be engaged in steering rather than rowing—to use the ter-minology that became well-known.[16] The state was hollowed out and the private sector was brought in to perform functions that formerly were discharged by the state.[17]

The public sector and its technologies of government are still changing. Now, however, the driver is best described under a general rubric of 'modernisation'. This is a worldwide trend which shares several common elements based essentially

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[14] *Ibid* at 276–77 (emphasis added).

[15] As Foucault says, 'where there is power, there is resistance': *Discipline and Punish: The Birth of the Prison* (London, Penguin, 1977), 187.

[16] This phrase comes of course from the influential book by D Osbourne and T Gaebler, *Reinventing Government: How the Entrepreneurial Spirits is Transforming the Public Sector* (New York, Plume, 1992).

[17] See further, eg, R Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Buckingham, Open University Press, 1997).

on developing consumer focus, improving public sector performance and taking advantage of new information and communication technology.[18] In the United Kingdom this is a complex, constantly changing and somewhat indistinct phenomenon. It encompasses much of what is more or less straightforward reform, such as the modernisation of Parliament and reforms to political party funding. It also provides a 'brand' to describe general processes of change in the health service, education and, particularly, local government. It also, however, involves a more general orientation in the organisation of government. This involves a new approach or *style* in government operations. This is oriented essentially around reinvigorating public services by bringing in different concepts of efficiency, including elements of private sector efficiency, but without ceding control to the same extent as with earlier versions of privatisation[19]. Figure 7.1 again suggests some of the main general elements of this. Ideas of partnership are key: government is to be the enabler, facilitator or regulator rather than a main provider. Targeting resources, monitoring and enforcement and measuring satisfaction are important. Benchmarking and performance management is a particular feature. Initiatives are typically project-based, cross-cutting and joined up. As the original key document, the White Paper *Modernising Government* (Cm 4310, 1999) expresses it, the aim is to ensure that the public sector will operate in a way that is 'as efficient, dynamic and effective as anything in the private sector' (para 11). Indeed according to the preface of the White Paper, modernising government is not just 'a series of measures that the government will implement now' but also 'a clear statement by the Government of what government is for'. This is undoubtedly an important idea for the Labour Government. The White Paper itself, however, is a complex mixture of the banal and the important: (with characteristic New Labour disregard for syntax) the document claims to offer 'Not Government for those who work in government: but government for people, people as consumers, people as citizens'. The 'Overall Vision' outlined in chapter 1 sees the public sector 'with a culture of improvement, innovation and collaborative purpose' (para 10). It suggests that this can be achieved by the twin goals of seeking to meet users' needs more effectively and improving departments' performance. The White Paper then goes on to develop this in more detail through three 'aims' and five 'key commitments' which are to guide a long-term programme of 'modernisation'.

For the second term, the delivery mechanisms for modernised government have changed but the emphasis on public sector reform has intensified. Now the initiative is supported by the Prime Minister's Delivery Unit and the Office of Public Services Reform. A new document, *Reforming Our Public Services: Principles into Practice* has been published in March 2002. This offers 'four principles of public

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[18] For the phenomenon of modernisation worldwide see http://www.servicefirst.gov.uk/2000/modernising/worldgovernments.htm

[19] As A Giddens puts it, 'the restructuring of government should follow the ecological principle of "getting more for less", understood not as downsizing but as improving delivered value'. *The Third Way: The Renewal of Social Democracy* (Cambridge, Polity Press, 1998) 74.

sector reform' which turn out to involve national standards; devolution and delega-
tion; flexibility; and expanding choice.[20] Some of the initial modernisation pro-
grammes have been retained, some have mutated and some have withered away.[21]
Indeed the picture here is one that seems to be constantly changing, with a whole
variety of initiatives building on past programmes and emerging from a range of
teams and groups within the Cabinet Office. For example, originally there was the
Modernising Public Services Group as part of the 'Better Government' initiative
and within it there was the Effective Performance Division. Its main initiative called
'Service First' was launched in 1998 as part of an exercise to raise the standards of
public services and make them more accountable to users. In 2001 the Government
announced a new 'consumer focus' for public services involving regular use of its
(now discontinued) Peoples' Panel to carry out consumer surveys across a range of
public services.[22] This built upon The Citizen's Charter produced by John Major's
Government in 1991 which was relaunched as the New Charter Programme with
six key themes and nine principles in place of the original six.[23] Now, in addition to
the Delivery Unit and the Office of Public Services Reform, there is a Centre for
Management and Policy Studies which offers nine principles of public service
delivery and concerns itself with spreading ideas of best practice across the public
sector. There is a Good Practice Database, a set of Best Practice Links and a library
of best practice guides, although it is for individual service providers to give effect
to these principles of public service delivery by issuing their own charters and
charter standard statements. Among the numerous best practice guides produced
there is even a guide to drawing up charters with a checklist of eight standards to
guide the production of standards.[24] There are the Service First Quality Networks[25]
(currently 24 in number) which seek to develop and disseminate good practice
regionally. There is the Charter Marks scheme which assesses performance against
10 criteria (to be redefined to six in autumn of 2003). This accredits public service
organisations as 'Investors in People', or one of the other indicators of excellence,
and which may in turn lead to qualification in the Central Government Beacon
Scheme.[26] In addition there is the Public Sector Benchmarking Service which sets
standards for performance and encourages 'organisational learning'.[27] There is even
a system for finding and linking up with European benchmarking partners.[28]

[20] See further www.number-10.gov.uk/output/page5624.asp
[21] See further www.cabinet-office.gov.uk/eeg/secondphase.htm. Activity here is almost constant. For
example, the 2002 Comprehensive Spending Review added 130 additional targets to the 300 or so
targets that were announced in the 1998 Comprehensive Review. Meanwhile it has been estimated that,
for example, Home Office Ministers announced some 46 initiatives within 10 months and the Educa-
tion Secretary issued 4,500 pages of policy guidance within 17 months in 2001–2002.
[22] See www.servicefirst.gov.uk/consumerfocus/guide_general.htm
[23] See further www.servicefirst.gov.uk/1998/introduc/nine.htm and also G Drewry, 'Whatever
happened to the Citizen's Charter?' [2002] *Public Law* 9.
[24] *Service First: The New Charter Programme*, at 4.9.
[25] See www.servicefirst.gov.uk/index/nethome.htm
[26] See further http://www.chartermark.gov.uk/ andwww.cgbs.org.uk
[27] See www.benchmarking.gov.uk
[28] See further http://forum.europa.eu.int/irc/euradmin/eubenchmarking/info/data/en/ebnsite/
page1b.htm

Within wider ideas of modernisation there are Public Service Agreements setting targets and establishing performance indicators across the public services for modernisation and reform and introducing criteria for assessment. Within the 'Best Value' programme, which controls the way in which local authorities operate in their various roles as regulators, procurers and providers of services, there is a whole new approach which emphasises fundamental performance reviews of how local services are organised and provided. It brings in the '4Cs' (challenge, consult, compare, compete) which provide an entire new operational philosophy suggesting that local authorities should provide services directly only where it can be established that they are best placed to do so, and here their role must be closely monitored by performance indicators and benchmarking. The creation of a scheme of model 'beacon councils' under the Local Government Act 1999 allows relaxation of various statutory controls on councils which are performing excellently (although significantly it is Whitehall still that distributes 75 per cent of the funding). The introduction of a new power to 'promote community well-being' in the Local Government Act 2000 provides a further mechanism for controlling at a distance how different parts of government operate.[29] This idea of 'earned autonomy' for bodies that are performing within the measures provided has been extended to the health service with 'foundation hospitals' being afforded more resources and less direct control. Even where civil society in the form of the community and voluntary sectors are enlisted in the process of government through discharging certain of the service delivery and policy-making functions in partnership with government, there is a whole framework of semi-formal 'Compacts' setting out the terms on which such partnership should ideally take place.[30]

All this complexity associated with the general modernising government initiative is presented here to suggest that what is occuring can best be seen in terms of governmentality. The whole exercise in Modernising Government is one of capturing an area, describing it in certain terms, devising measures for what is happening, and regulating and controlling it through a massive injection of government effort to implement another way of looking at the world. This involves much more than a legislative programme but encompasses the development of a whole strategy of 'governmentality'. Of course, some aspects of this do not work: some concepts do not translate across the various enclosures or nodes of power. Indeed the constantly changing face of the modernisation programme, where various initiatives have fallen by the wayside, indicates that not everything

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[29] See further, generally, I Leigh, *Law, Politics, and Local Democracy* (Oxford, Oxford University Press, 2000). Indeed, local government seems particularly open to new measures, with the White Paper, *Strong Leadership, Quality Public Services* (2001) (available at www.local-regions. dtlr.gov.uk/sll/index.htm providing further suggestions for yet another layer of framework of performance indicators, evaluations and rewards.

[30] See further J Morison, 'The Government-Voluntary Sector Compacts: Governance, Governmentality, and Civil Society' (2000) 27 *Journal of Law and Society* 98 for details of how these compacts were drawn up across each of the four regions/nations of the United Kingdom and how these form the basis for further more detailed, local agreements controlling the relationship between central, devolved and local government and the sector. (This essay also attempts to view this process within an account of governmentality.)

that government offers translates or is given effect. However, the overall effect is that the general environment is changed. New 'truths' are revealed and the world recalibrated so that institutions, agencies and people begin to make themselves up in different ways and act accordingly. 'Government', in the sense of acting upon action or managing possibilities, is undoubtedly occuring.

Clearly in this context the activity of government is not accurately to be seen as simply the state issuing commands but rather as a much more complex process involving aspects of government in conjunction with myriad other actors developing strategies, techniques and procedures which operate across all the various value systems and concentrations of power existing within the formal state and outside it in enclosures of political, professional and scientific power. Here the language of standards, benchmarks and performance indicators operates to provide a framework within which people and agencies operate. Concepts such as 'efficiency', 'quality', 'responsiveness', 'best practice', 'best value', 'excellence' or 'mission' are used to introduce basic controlling concepts around which people and agencies can organise themselves and their practices. Techniques of accountability such as centrally set but locally managed budgets and a whole set of practices of evaluation and auditing now provide the means by which agencies, people and communities must orient their actions and make up their lives. A governmentality perspective allows us to see the modernising government programme as being, in the words of Rose and Millar, 'a domain of strategies, techniques and procedures through which different forces seek to render programmes operable'.[31] In this way it can be understood that the power of a government or any individual agency comes from the assemblage of forces by which particular objectives and injunctions can be activated to shape the actions and calculations of others. To understand how power operates, how an actor or agency is able to enlist and mobilise all these diverse forces in pursuit of its roles, we need to look at all the details of how different parts of government set about engaging with the many networks and alliances that make up the chain that translates power from one locale to another. We need make no apology for looking at the detail rather than simply Acts of Parliament or upper court judgments. As Foucault urges as what he terms 'a methodological precaution', we must:

> conduct an *ascending* analysis of power, starting, that is, from its infinitesimal mechanisms ... and then see how these mechanisms of power have been—and continue to be—invested, colonized, utilized, involuted, transformed, displaced, extended, etc. by ever more general mechanisms and by forms of global domination.[32]

This is very far from ideas simply of sovereignty and state. It puts the focus instead on the details of the technologies of government, those strategies, techniques and procedures through which different forces and groups (including the formal state but beyond it too) attempt to render their programmes operable. This

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[31] N Rose and P Miller, 'Political Power beyond the State: Problematics of Government' 43 *British Journal of Sociology* 173, 183.

[32] 'Two Lectures' in *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, above n 3, at 142.

understanding of the activity of government and of the technologies of government provides a way of comprehending how power in more informal or unofficial formats operates generally and, in particular, how new technologies of government sit within the constitution. With this approach we can turn to e-government as a more sustained example both of how government seeks to structure government-citizen interaction and how this may be contested and shaped in favour of a more democratic approach.

E-GOVERNMENT: UK ONLINE AS A TECHNOLOGY OF GOVERNANCE

The use of information and communication technology (ICT) is a significant aspect of many of the modernisation processes that are occurring in administrations worldwide.[33] There seems to be a general belief that the processes of government can be improved by drawing upon the ability of ICT to store, process and communicate large amounts of data. This has led to the development of ideas of e-government.[34] Generally this may be defined in terms of using the power of ICT to help transform the accessibility, quality and cost-effectiveness of public services and to help to revitalise the relationship between citizens and government through improved consultation and participation in governance.[35]

In the United Kingdom, e-government is a centrally important element in the general modernisation of government process. UKonline (www/ukonline.gov.uk), launched in December 2000 as the portal through which citizens and others eventually will interact with government online, is central to the modernisation strategy. It is intended that UKonline.gov.uk will be the principal entry point of access for citizens to government information and to services online. The White Paper *Modernising Government* (1999) put a particular emphasis on 'Information Age Government' and how it is important to 'modernise the business of government itself, achieving joined up working between different parts of government and providing new, efficient and convenient ways for citizens and businesses to communicate with government and receive services'.[36] UKonline is to lead the drive to better integration of government services. ICT has been identified by the Head of

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[33] There is a webpage at www.gksoft.com/govt/en/ linking governments across the world who are on the World Wide Web.) There are a number of surveys and evaluations of government websites. The Cyperspace Policy Research Group (CyPRG) has tracked the spread and deployment of the Web in 192 governments around the world since 1996 and established a comprehensive database of national public agency websites which can be accessed online. See further www.cyprg.arizona.edu.

[34] See further, eg, R Traunmüller and K Lenk (eds), *Electronic Government: First International Conference, EGOV 2002, Aix-en-Provence, France, September 2002 Proceedings* (Berlin, Springer, 2002) (also available at htttp:link.springer.de/series/Incs/) for a large number of examples from across the world of attempts to modernise government through ICT. See also www.gksoft.com/gov/en/ for webpage linking to governments across the world who are on the World Wide Web and also Silcock 'What is e-government? [2001] *Parliamentary Affairs* 88 and Y. Akdeniz, C Walker, and D Wall, *The Internet, Law and Society* (Harlow, Longman, 2000).

[35] The principal ICT is the Internet, accessible through a variety of means including personal computers and kiosks, mobile phones including text messaging (SMSS), and digital television.

[36] *Modernising Government* (Cm 4310, 1999) ch 5, para 5.

the Civil Service as one of the key enablers to achieve the goals of reform and delivery in the Civil Service.[37] The second phase of modernisation, introduced by *Reforming our Public Services: Principles into Practice* (2002), refers to the 'huge opportunity to harness new technologies to raise standards in public services'[38] and it has endorsed the target of 100 per cent of key services available online by 2005 set in the original *Modernising Government* paper.[39] The role of the e-envoy within the Cabinet Office in promoting e-government and moving government towards its target is also significant.[40] The work of this post is supported both centrally and in the devolved administrations by e-ministers within each department charged with developing departmental strategy and e-champions drawn from senior officials within departments.[41]

In addition to ideas about service delivery, the consultation aspect of e-government also is particularly important in the context of many of the newer policies involved in wider ideas of modernisation. The Cabinet Office and the e-envoy have launched a large-scale consultation on a policy for electronic democracy based on the premise that ICT can 'facilitate, broaden and deepen' participation.[42] This fits in well with general policies which require increasingly that services are targeted and delivery mechanisms monitored; e-government is particularly appropriate for local government too in this context as both improved service delivery and enhanced consultation are central to new approaches to local services. For example, ideas about community leadership duties contained in the Local Government Act 2000 (and proposals outlined in the recent White Paper, *Strong Local Leadership, Quality Services*[43]) put an emphasis on articulating and developing a vision for the community to be obtained after extensive dialogue and consultation. The Best Value regime also involves commitment to consult all sections of the local community on key best value priorities and on the effectiveness of service delivery. More directly, £350 million has been allocated to local government online funding. Targets have been set within public service agreements and, for example, the Best Value Performance Indicator (BVPI 157) provides measures of progress for local authorities in meeting e-government targets where crucially one of transactions identified as suitable for delivery in electronic form is consultation.

Beyond the modernisation programme there is also optimism about e-government in a wider role of reinvigorating traditional democracy. This extends beyond

[37] See paper by Sir Andrew Turnbull to the Civil Serivce Management Board, June 2002, available at www.cabinet-office.gov.uk/2002/news/turnbullpaper.doc and I Holliday, 'Steering the British State in the Information Age' in *Government and Opposition* (2000), 314–29.

[38] *Reforming our Public Services: Principles into Practice* (2002), 14.

[39] It is now expected that only 80% of services will be accessible via the internet by the end of 2005 but of more concern is evidence that despite the internet is being used enthusiastically for shopping, citizens take-up of on-line government services is not growing as expected and in some areas has actually fallen. (See *The Economist*, 4 January 2003.) See also n 52.

[40] See further www.e-envoy.gov.uk

[41] See www.e-envoy.gov.uk/EStrategy/Echampions/fs/en

[42] *In Service of Democracy: A Consultation Paper for Electronic Democracy* (2002).

[43] Above, n 29. See also DTLR and LGA, *e-gov@local: Towards a National Strategy for Local E-Government* (2002) and FITLOG, *Role Models for the Information Age: Using Information Technology to support the New Political Management Arrangements* (2001).

rather limited experiments in e-voting,[44] to notions of establishing a better dialogue between the governed and the governors, perhaps ushering in a whole series of ideas about dialogic or participatory democracy and better forms of decision-making.[45]

Indeed, as some aspects of the formal modernisation programme struggle to find their way into the second phase of the programme, the e-government component is thriving. 2002 *alone* has seen the production of eight major reports from different aspects of government on various aspects of e-government, from local services and participation in local government to e-voting and the state of development.[46] It is also significant that the same period has seen an increasing number of reports and responses from various bodies and interest groups outside government.[47] There is no doubt that e-government is becoming a space for government and it is one that is being contested and shaped as it is increasingly rolled out.

The development of government online should be seen accordingly as an evolutionary process. The rate of evolution depends on complex factors including much more than simply the development of the technology. For example, research from the Cyber Policy Research Group looking at the factors which influence the development of government websites suggests that factors such as the structure and personnel of government and, particularly, the influence of commercial companies and standards drawn from the private sector are influential.[48] Government, of course, remains a major figure in this development. Figure 7.2 provides a model for the general evolution of government online. This development begins with a straightforward posting of information online where communication is one-way and simple. It may then evolve into a more interactive exchange between government and citizens where simple transactions such as renewing passports or paying taxes can be completed. Later services will be combined at a single point of entry and more complex personalisa-

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[44] See further the work of the Hansard Society on the use of Internet technology in the United Kingdom's general election in 2001 in S Coleman (ed), *2001: Cyber Space Odyssey: The Internet in the UK Election* (London, Hansard Society, 2001) and the Electoral Commission, *Modernising Elections: a Strategic Evaluation of the 2002 Electoral Pilot Schemes* (2002) at www.electoralcommission.org.uk/publications.htm#anchor1

[45] For example, Tony Blair has declared that, 'I believe that the information society can revitalise our democracy' and he has referred to how 'innovative electronic media [is] pioneering new ways of involving people of all ages and backgrounds in citizenship through new internet and digital technology … that can only strengthen our democracy'. Quoted on Hansard Society, *E-Democracy Programme* webpage at www.hansard-society.org.uk/eDemocracy.htm. Stephen Coleman of the Hansard Society argues for a 'civic commons in cyberspace' which would involve creating an enduring structure to fulfil the democratic potential of the new interactive media. See *Realising Democracy Online: A Civic Commons in Cyberspace* (2001).

[46] National Audit Office, *Government on the Web II*; Audit Commission, *Better Public Services through E-Government*; Audit Commission, *Councils and E-Government*; Improvement and Development Agency, *Local E-Government Now, 2002*; DTLR and LGA, *e-gov @ local*; OGC/Office of e-envoy, *In the Service of Democracy: A Consultation Paper on a Policy for Electronic Democracy*; Electoral Commission, *Modernising Elections: a Strategic Evaluation of the 2002 Electoral Pilot Schemes*.

[47] See, eg, IPPR, *E-Participation in Local Government*; SOCITM, *Better Connected 2002?*; SOCITM and IDEA, *Local E-Government Now: A World Wide View*; Hansard Society, *Technology: Enhancing Representative Democracy in the UK*

[48] See T La Porte, C Demchak and C Friis, 'Webbing Governance: Global Trends Across National Level Public Agencies' in *Communications of the ACM* (2001) which draws upon interviews with 150 webmasters worldwide.

Evolutionary stage	Level of service available	Type of communication	Form of government organisation
1. Information publishing/ dissemination	Departments set up basic websites, list services and contact points	One–way, 'push', ie analogous to broadcast, 'electronic notice-board' adverts for hardcopy publications	Developed and organised by individual departments. for own use
2. Official two-way transactions	Customers/citizens able to transmit information; limited e-publishing	Two-way communication, 'push' and 'pull'—ie data on request, downloadable documents; electronic signatures for simple transactions	Individual departments or central IT unit initiating e-services for use in departments to duplicate existing mechanisms
3. Multi-purpose portals	Single point of entry to multiple government services allowing multiple transactions	Bi-directional communication—send and receive information plus monetary transactions	Interdepartmental co-operation, some cross-cutting organisation
4. Portal personalisation	Individual customer preferences and interests	Customised individual service	Increased cross-cutting of departments
5. Clustering of common services	Perceptions of government as multiple entity replaced by transaction-led interaction across government as a whole	One-touch access; full range of links across to private and voluntary sectors and rest of government	Individual-led interaction with 'Government' as single entity; cross-cutting or fully integrated services requiring modified departmental structures;
6. Full integration and transformation	Technology integrated, distance between front and back office shortened or eradicated; services totally integrated across what were formerly department boundaries	Fully interactive; zero touch technologies; proactive alerts; supporting online voting, consultation and discussion	Budgets and culture follow traffic mix; 'isocratic' administration; a revolution in government?

FIGURE 7.2: *The evolution of e-government services*

tion of citizen's entry points can take place. Here communication may be more inter-active and unprompted. A final stage might well involve the joining together of con-sultation processes with service delivery functions within a single portal where all government-citizen interaction takes place in a seamless way.

Such an evolution does, of course, require an associated change in the structure of government as the fourth column of Figure 7.2 indicates. This is a very impor-tant issue. As the technological front office develops, and the old departmental boundaries are blurred in an effort to ensure that the citizen can access the service required directly (rather than simply the department that deals with one or another aspect of his or her problem), so too will the back office change and develop within a general process of integration of services. If citizens are accessing services organised by issues or life events then government departments may find themselves necessarily involved in more and more cross-cutting organisation and, eventually, perhaps in providing more fully integrated services that will challenge the organisation of traditional departments.

At its highest stage of evolution, a fully integrated online government inevitably would bring *huge* changes in the structure of the administration as budgets and culture would follow the direction of traffic making use of individualised, zero touch technologies. From the point of view of the citizen he or she would not be interacting with individual government departments but with 'Government' as a single entity. Indeed at this level (beginning at stage 5 and covering mainly stage 6 of Figure 7.2 above) the whole idea of e-government *involves* and *requires* changes in how government itself is organised.

There is in this way an architecture to e-government requiring links between different parts of government and routes to individual citizens in order to conduct authenticated transactions. The way in which the citizen accesses government, the means by which that that inquiry is routed, and the part of government that deals with the inquiry, are thus intimately linked within the model of e-government. Figure 7.3 shows the framework that is involved.
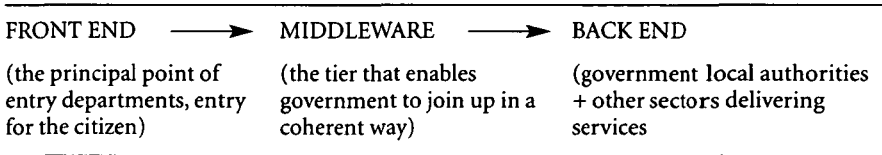
FRONT END $\longrightarrow$	MIDDLEWARE $\longrightarrow$	BACK END
(the principal point of entry departments, entry for the citizen)	(the tier that enables government to join up in a coherent way)	(government local authorities + other sectors delivering services

FIGURE 7.3: *E-government framework*

Within the UK context, ambitions are set at a high level. (Indeed, because of the particular architecture of UKonline there are issues about how technology can expect to change government structures and cultures even at lower evolutionary stages, for example around stages 3 and 4 and moving towards stage 5 in Figure 7.2.) The idea is that www.ukonline.gov.uk will be the 'front end', the principal entry point for citizens to access government information and services online. According to the stated policy of the e-envoy, it will be 'the key driver in
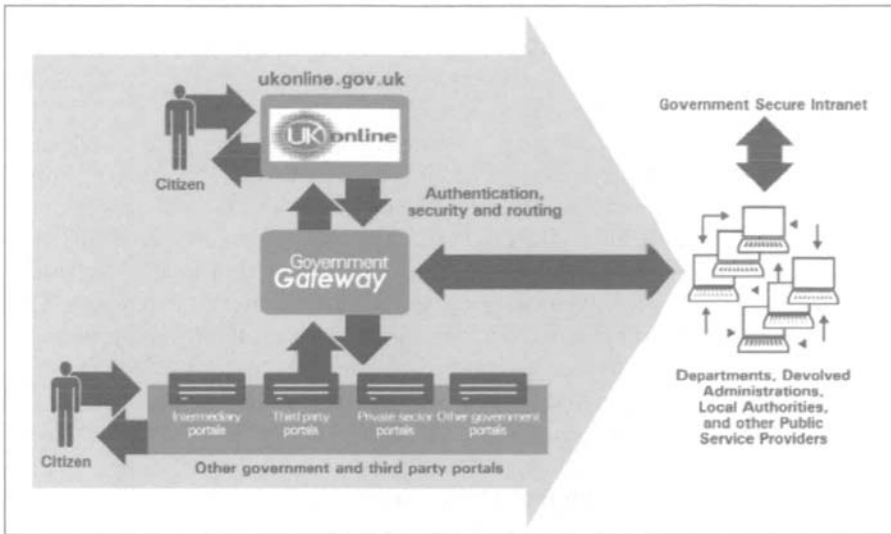
FIGURE 7.4: *The Government Gateway*

transforming the way in which public services are organised and delivered, and in leading the drive to better integration of government services'.[49] While there will be other portals too (for example in the devolved administrations and through local government sites), the idea is 'bring together all public sector portals and web-sites under the UK online brand'.[50]

The 'middleware' is provided by the Government Gateway (see Figure 7.4). This is a sophisticated piece of secure infrastructure with intelligent routing and authentication software opening up different parts of government (and related bodies in the public, private and voluntary sectors) to interact with each other and conduct transactions with the public. The Government Gateway is being developed to ensure that all government information and services are aggregated in one place. It is intended to provide joined up and transparent access to all parts of government and also to ensure that the necessary and appropriate security and authentication is available to enable different parts of government to conduct electronic transactions with citizens.

This is an important piece of governmental architecture and its place within the overall framework designed to transform citizen inquiries into government business has profound consequences for the shape and design of government. It is intended to perform an immense role in routeing and authenticating communications between citizens and all the different parts of government, including devolved and local service providers as well as those other providers drawn from

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[49] See *UK Online.gov.uk: Connecting You with Government Information and Services* (2001) available online at www.e-envoy.gov.uk

[50] *Ibid* at 12.