

As France developed in the postwar period, political elites began to see the highly centralized nature of the French state as an obstacle for good governance and, simultaneously, as an impediment to the democratic national interest. In 1981, the Socialist Party under President Mitterrand came to power under a platform proposing to decentralize authority from the center to the subnational governments. The decentralization law, titled the Law on Rights and Liberties for Communes, Departments, and Regions proposed to redefine the power relationship between local politicians and the state administrative apparatus. Under the aegis of Gaston Defferre, Minister of the Interior and Decentralization, the Socialists envisioned decentralization as a mechanism to invigorate the French citizenry and, in the words of President Mitterrand, “give the state back to the people.”<sup>1</sup> However, while the *loi Defferre* as it came to be called would in fact empower local government vis-à-vis the state, entrenched political interests would ultimately keep decentralization from achieving its democratizing potential.

## I. Organization of the French State

Traditionally, France has been conceived as a highly centralized state with strong, predominant central institutions. Tocqueville considered that France, under the *ancien regime*, had achieved “the greatest possible degree of centralisation of government that can be conceived.”<sup>2</sup> Though the unitary figure of the monarchy vanished with the Revolution, the central government assumed a “legal omnipotence” that soon came to define the indivisible French Republic.<sup>3</sup> The forces of the Revolution repurposed the monarchy's centralizing ideology in order to pursue “the idea that the French people are a natural entity to which one's first loyalty

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<sup>1</sup> MICHAEL KEATING & PAUL HAINSWORTH, *DECENTRALISATION AND CHANGE IN CONTEMPORARY FRANCE* 15 (Gower 1986).

<sup>2</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 88 (J.P. Mayer ed., George Lawrence trans., HarperCollins 2000) (1835).

<sup>3</sup> See Sonia Mazey, *Power outside Paris*, in *DEVELOPMENTS IN FRENCH POLITICS* 152 (Peter A. Hall et al. eds., St. Martin's Press 1990).

is due.”<sup>4</sup> By the time of the Third Republic, centralization had captured the entire spectrum of the French political psyche: conservatives saw it a mechanism to maintain old traditions and institutions while liberals viewed regional administration as “a haven of reaction, clericalism, and royalism.”<sup>5</sup> According to Vivian Schmidt, the Revolution cemented a cultural dichotomy between national unity on the one hand and individual equality and local democracy on the other.<sup>6</sup> The underlying concern in French national politics was that, absent a strong center, French nationalism would give way to fragmentation.<sup>7</sup>

In addition to embracing the ideas of the *ancien regime*, post-Revolutionary France also maintained the state’s prior institutional framework: royal provinces and parishes became departments and communes.<sup>8</sup> Subnational government is firmly divided into three levels: communes, departments, and regional councils. As decentralization would demonstrate, once institutionalized, the French state has great difficulty legitimately reforming or restructuring any level of subnational government. Combined, modern France contains more subnational administrative units than any other European country—and far more units than useful. The proliferation of political and administrative unit produces, according to Alistair Cole, “a rich diversity of local and regional...practices” or, more cynically, “a jungle of institutions and *ad hoc* rules which defy Cartesian logic and rationality” despite a centrally-imposed uniform structure of governance.<sup>9</sup>

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<sup>4</sup> KEATING & HAINSWORTH, *supra* note 1, at 6.

<sup>5</sup> *Id.*

<sup>6</sup> VIVIAN SCHMIDT, *DEMOCRATIZING FRANCE: THE POLITICAL AND ADMINISTRATIVE HISTORY OF DECENTRALIZATION* 4 (Cambridge University Press 1990).

<sup>7</sup> John Loughlin states the France is fundamentally a diverse make-up of different historical, political, and cultural backgrounds; he cites a remark presumed to have come from General De Gaulle: “You can unite the French only through fear. You simply cannot bring together a country that has over 365 kinds of cheese.” JOHN LOUGHLIN, *SUBNATIONAL GOVERNMENT: THE FRENCH EXPERIENCE* 25 (Palgrave Macmillan 2007).

<sup>8</sup> SCHMIDT, *supra* note 6, at 4.

<sup>9</sup> ALISTAIR COLE, *FRENCH POLITICS AND SOCIETY* 115 (Prentice Hall 1998); YVES MENY, *THE FRENCH POLITICAL SYSTEM* 108 (Debra Matier & Martin Rhodes trans.. Institut International d’Administration Publique 1998).

France's largest subnational units, the twenty-two regional councils, are a product of France's rapid urbanization after the Second World War. The imposition of a larger layer of subnational government was initially resisted to such an extent that when the regional councils were formally institutionalized in 1972 the center stressed that their primary motivation was strictly to encourage industrialization and not regionalization.<sup>10</sup> The regional councils were designed to coordinate administrative planning among the departments and communes and, in fact, initially possessed no executive or decision-making functions.<sup>11</sup> Until decentralization, the regions functioned largely as administrative rather than political units; membership of the regional councils was composed of members of the National Assembly alongside members nominated from local communes and departments.

France is further divided into 96 departments. Initially in the Napoleonic era, the departments were envisioned as center-controlled administrative organs which could direct central policies over the periphery.<sup>12</sup> Until 1871, the departments were staffed by state-appointed advisory committees, but even after the departments became locally elected, primary control of the departments continued to rest in center-appointed representatives known as prefects. While the departments were nominally headed by an elected president, the prefect functioned as the department's chief executive. The mission of the prefect was initially to maintain "loyalty to the government [and] to see that central government decisions were uniformly applied throughout the country," and prefects oversaw all central government services at operation within the department.<sup>13</sup> Prefects were identified as the local embodiment of the

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<sup>10</sup> See SCHMIDT, *supra* note 6, at 94.

<sup>11</sup> See ANNE STEVENS, GOVERNMENT AND POLITICS OF FRANCE 147-8 (3<sup>rd</sup> ed., Palgrave Macmillan 2003) (1992).

<sup>12</sup> See *id.*; see also ROBERT ELGIE & STEVEN GRIGGS, FRENCH POLITICS: DEBATES AND CONTROVERSIES 76 (Routledge 2000).

<sup>13</sup> See STEVENS, *supra* note 11, at 155.

central government, so much so that changing the name of the office provoked tremendous controversy during decentralization.<sup>14</sup>

The formal power of the prefect over the state's smallest subnational unit, the commune, was the "most visible symbol of the central state power."<sup>15</sup> Before decentralization, prefects enjoyed large *de jure* if not *de facto* oversight authority over the communes. The power of "tutelage" (or *la tutelle*) provided prefects with "a superior authority over decentralized bodies and their actions, granted in order to protect the general interest."<sup>16</sup> Tutelage consisted of both political and financial oversight of local decisions.<sup>17</sup> The prefect's political power over decision-making was considered a formidable source of centralizing power because the prefect had the legal authority to ensure that communal actions were not *ultra vires*. These determinations were made *a priori*, giving the prefect a de facto veto, effectively providing the prefect with a discretionary power to overrule local decisions.<sup>18</sup> This power was resented locally, but increasingly financial tutelage, and prefects control over local budgets, became a larger burden upon local authorities.<sup>19</sup>

The commune has its historical antecedent in parishes crafted during the Middle Ages, which helps to explain why France has so many communes: over 36,000. Due to the sheer number of communes and the broad dispersal of population across France, the system has created highly fragmented local government. The majority of communes consist of fewer than 500 people, and 90% have fewer than 2,000 inhabitants.<sup>20</sup> However, five communes have more

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<sup>14</sup> See SCHMIDT, *supra* note 6, at xx.

<sup>15</sup> See ELGIE & GRIGGS, *supra* note 12, at 77.

<sup>16</sup> BRIAN CHAPMAN, INTRODUCTION TO FRENCH LOCAL GOVERNMENT 124 (Hyperion 1953), *citing* MASPETOIL ET LAROQUE, LA TUTELLE ADMINISTRATIVE 10 (Sirey 1931).

<sup>17</sup> *Id.* at 124-39.

<sup>18</sup> See ELGIE & GRIGGS, *supra* note 12, at 77.

<sup>19</sup> See Mark Kesselman, *The Tranquil Revolution at Clochemerle*, in SOCIALISM, THE STATE, AND PUBLIC POLICY IN FRANCE 166 (Philip G. Cerny & Martin A. Schain eds., Methuen 1985).

<sup>20</sup> *Id.* at 75.

than 300,000 inhabitants and major cities are often a single commune.<sup>21</sup> While Paris presents a particular exception, each of these communes has the same legal status and responsibilities in spite of their disparate appearance. Because the small local organization provided for by the communes was designed by an agrarian society, communes now are often ill-equipped or powerless to confront modern urban problems within their scope of responsibility.<sup>22</sup>

Despite the structural problems presented by the communes, France's subnational division is deeply rooted in history and has become "an integral part of the political culture."<sup>23</sup> French civil identity is intertwined with communal identity and local loyalties ensure the continued survival of the communes as a subnational unit.<sup>24</sup> The state's efforts to consolidate and reform the communes, including the 1971 Local Government Act, have been a "total failure."<sup>25</sup> Communes also appear to benefit structurally from enhanced democratic legitimacy: municipal councils are directly elected, and communes are dominated by the personality of elected mayors. If prefects were the embodiment of the center, communal mayors remain the quintessential local political figure. Mayors find themselves in an intriguing position within the French state and, as a result, wear a variety of different hats so to speak. Mayors perform many tasks as an agent on behalf of the central state,<sup>26</sup> but they also serve as a representative of both their commune's citizens and the municipal council before the state. However, their standing within the community permits mayors to collect an independent source of political authority and,

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<sup>21</sup> Emmanuel Negrier, *The Changing Role of French Local Government*, W. EUR. POL., Oct. 1999, at 120, 122.

<sup>22</sup> See COLE, *supra* note 9, at 115-7.

<sup>23</sup> Albert Mabileau, *Local Government in Britain and Local Politics and Administration in France*, in LOCAL POLITICS AND PARTICIPATION IN BRITAIN AND FRANCE 23 (Albert Mabileau et al. eds., Cambridge Univ. Press 1989).

<sup>24</sup> See STEVENS, *supra* 11, at 142; COLE, *supra* note 9, at 116.

<sup>25</sup> See Mabileau, *supra* note 23, at 33.

<sup>26</sup> See COLE, *supra* note 9, at 117.

thus, perpetuate the commune's administrative relevance within the French state.<sup>27</sup>

Alas, the tripartite division of subnational government in France belies the complexity of the center-periphery relationship both before and after *loi Defferre*. The three levels of government are not organized into any type of legal hierarchy; communes are in no way formally subordinate to departments or regions.<sup>28</sup> This produces an institutional degree of overlapping competency among and between subnational units and the state, producing duplicative efforts and functional rivalry as a result.<sup>29</sup> Communal mayors and departmental prefects were the dominant political figures before decentralization, and the relationship between the two could often be ill-defined and “very often confused.”<sup>30</sup>

Because prefects could find themselves without institutional support from the center and lacked the democratic legitimacy of the mayors, powerful mayors could effectively “override” prefects.<sup>31</sup> While prefects possessed the power of tutelage, this nuclear option of sorts was rarely used as an offensive weapon of the center.<sup>32</sup> In order to ensure the effectiveness of their departments, prefects functioned more as “architect[s] of concerted action” between the center and periphery than “an arbitrary hierarch.”<sup>33</sup> By the time the issue of decentralization came to the fore in 1970s, prefects had become as much “ambassadors” of the department to Paris as representatives of the central government.<sup>34</sup> Prefects were even moved around regularly out of

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<sup>27</sup> See ELGIE & GRIGGS, *supra* note 12, at 75. Mayors are dominant political figures within the French political sphere. In small towns, mayors become strongly identified with their commune (*see generally* LOUGLIN, *supra* note 7, at 153), and, in larger communes the office of mayor provides a stepping stone to national prominence. Key French politicians were mayors—Gaston Defferre, author of the 1982 Decentralization Act, served as mayor of Marseille for three decades.

<sup>28</sup> See ELGIE & GRIGGS, *supra* note 12, at 76; *see also* ANDREW KNAPP & VINCENT WRIGHT, *THE GOVERNMENT AND POLITICS OF FRANCE* 352 (Routledge 2006).

<sup>29</sup> See KNAPP & WRIGHT, *supra* note 28, at 352.

<sup>30</sup> HOWARD MACHIN, *THE PREFECT IN FRENCH PUBLIC ADMINISTRATION* 205 (Croom Helm 1977).

<sup>31</sup> See COLE, *supra* note 9, at 126.

<sup>32</sup> See SCHMIDT, *supra* note 6, 229-31. However, logically tutelage could potentially be used to provide political cover to local politicians, allowing them to take popular albeit functionally illegal positions.

<sup>33</sup> *Id.* at 228.

<sup>34</sup> See STEVENS, *supra* note 11, at 155.

fear by the central government that prefects would “go native.”<sup>35</sup>

The visible relationship between center-periphery represented by prefects and mayors is also clouded by the capacity for elites, both inside and outside of politics, to accumulate power within the French political system. One theory posits that prefects and the administrative apparatus of the state are dependent upon the cooperation and approval of these *notables*.<sup>36</sup> The practical power of the prefects is inherently limited if *notables* refuse to provide support and cooperation for their actions.<sup>37</sup> Additionally, political *notables* maintain positions throughout communal, departmental, regional, and national administration. France's permissibility of multiple office-holding, the *cumul des mandats*, ensured that local officials were active participants within “informal circuits of power;”<sup>38</sup> it also meant that prefects were responsible with overseeing ostensibly local office holders that could challenge them at different points within French government.

Viewed in this manner, several theories argue that the interplay between the center and periphery is not dictated by the center, but rather the proper conception of center-local relations should be viewed as a system of mutual interdependence.<sup>39</sup> Jean-Claude Thoenig's developed a “cross-regulation model” to explain this dynamic, which he negatively described as a “honeycomb” where *notables* concentrate on shifting decision-making responsibility to avoid blame while accumulating benefits.<sup>40</sup> Proponents argue that the rapid development of the French

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<sup>35</sup> KEATING & HAINSWORTH, *supra* note 1, at 9.

<sup>36</sup> Michael Keating, *Decentralization in Mitterrand's France*, 61 PUB. ADMIN. 237, 238 (1983).

<sup>37</sup> *Id.*

<sup>38</sup> Vivian Schmidt, *Unblocking Society by Decree: The Impact of Governmental Decentralization in France*, 22 COMP. POL. 459, 461 (1990). The *cumul des mandats* further amplified the power of mayors within the French system.

<sup>39</sup> ELGIE & GRIGGS, *supra* note 12, at 83-90.

<sup>40</sup> See Jean-Claude Thoenig, *Local Government Institutions and the Contemporary Evolution of French Society*, in LOCAL GOVERNMENT IN BRITAIN AND FRANCE: PROBLEMS AND PROSPECTS 74, 91 (Jacques Lagroye & Vincent Wright eds., Allen and Unwin 1979).

welfare state after the Second World War benefitted from this informal system,<sup>41</sup> but critics point to the mutual interdependence of everyone within the system as a framework that was fundamentally “closed, conservative, immobile, and undemocratic.”<sup>42</sup> Rather than a political honeycomb, Michel Crozier conceived of the France as *la société bloquée* (the stalled society) wherein the political process was “blocked” as a result of the center’s preoccupation with controlling the periphery.<sup>43</sup> According to Michael Keating and Paul Hainsworth, this stifles initiative and innovation, obscuring political choices and weakening democratic institutions.<sup>44</sup> The two scholars detail one apocryphal story of how this dynamic weakened the legitimacy and efficacy of French politics:

[A] mayor [is] faced with a choice between a correct but unpopular decision and an incorrect but unpopular one. He took the popular decision, quietly asked the prefect to veto it, then publicly attacked the prefect for infringing local democracy.<sup>45</sup>

The *loi Defferre* would aim to alleviate this situation by shifting responsibility to local government to take the unpopular decision or suffer the practical implications. Additionally, decentralization aimed to decrease the role of the prefect in local government in order to encouraged increased civic participation and more democratic decision making.

## II. Background to Decentralization

The declared rationale behind the 1982 decentralization reforms, in the words of President Mitterrand, was “to give the state back to the people.”<sup>46</sup> Certainly democratizing impulses and increasing civil participation in and engagement with the responsibilities of

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<sup>41</sup> See DOUGLAS E. ASHFORD, POLICY AND POLITICS IN FRANCE: LIVING WITH UNCERTAINTY 109-111 (Temple Univ. Press 1982).

<sup>42</sup> KEATING, *supra* note 36, at 239.

<sup>43</sup> See LOUGHLIN, *supra* note 7, at 67.

<sup>44</sup> KEATING & HAINSWORTH, *supra* note 1, at 14.

<sup>45</sup> *Id.* at 12.

<sup>46</sup> *Id.* at 15.



government were the aim of the decentralization project,<sup>47</sup> but the *loi Defferre* were not envisioned as the wholesale dismantling of central French state or the encouragement of any sort of ethno-political regionalization. Rather, the project would be a moderated if necessary response to a myriad of factors which had reshaped France in the postwar period. Peter Gourevitch explores these factors, noting that the trauma of the Second World War, followed by the aftershocks of the Cold War, Keynesian economics, and decolonization forced a profound reevaluation of French institutions to emerge by the late 1970s.<sup>48</sup> The framework for decentralization was based upon realistic assessments of French society, political pragmatism by both the Socialists and the *notables*, and general idealized notions of the national good.

Any discussion of decentralization in the French context must begin by differentiating between *administrative* decentralization and *political* decentralization. Loughlin notes that administrative decentralization, termed “déconcentration,” precipitated the political decentralization at issue in the 1980s.<sup>49</sup> The goal behind déconcentration began as part of the effort “to ease the excessive burdens of the highly centralized political system of the Welfare State but gave little in the way of political decision-making power to lower levels of government.”<sup>50</sup> However, déconcentration appears to have served as implicit recognition that the tensions of the emerging French welfare state combined with the massive economic and social changes in postwar France begged increased local participation. However, the old system was designed to “keep politics out” of administrative decision making, and, as a result, outright partisanship was limited in framing policies at the local level.<sup>51</sup>

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<sup>47</sup> See Kesselman, *supra* note 19, at 181.

<sup>48</sup> PETER ALEXIS GOUREVITCH, *PARIS AND THE PROVINCE, THE POLITICS OF LOCAL GOVERNMENT REFORM IN France* 10-56 (Univ. of Cal. Press 1980).

<sup>49</sup> See LOUGHLIN, *supra* note 7, at 11.

<sup>50</sup> *Id.*

<sup>51</sup> JACK HAYWARD, *GOVERNING FRANCE: THE ONE AND INDIVISIBLE REPUBLIC* 34 (2<sup>nd</sup> ed., W.W. Norton & Co., 1983) (1973).

After a massive general strike in May 1968, President de Gaulle recognized that centralization had paralyzed initiative, diluted responsibility, and weakened the efficacy of government, and he began pushing a decentralization agenda.<sup>52</sup> Though his agenda failed due to political obstruction and lack of confidence, by the late 1970s it had become apparent that the modernization of agrarian France required improved decision-making between center and periphery. The economy was “no longer local,” Gourevitch explains, and this required “better” decision-making:

Some tasks had local dimensions but related to a larger locality than before. When better medical care came to require extremely expensive equipment, for example, the state could no longer contemplate furnishing each department or city with the whole panoply of modern machinery. As labor markets became larger, such problems as housing, employment, education, and transportation could no longer be dealt with in relation simply to the old units.<sup>53</sup>

The central government was ill-prepared to address these realities, and these challenges eventually produced a political no-win situation for national politicians. According to Gourevitch, the central government had “endless demands” placed upon it and, as the central power, was held responsible for everything; as a result, the state was “constrained by such pressures” undermining “both the legitimacy and efficiency of the state.”<sup>54</sup> Pragmatically, politicians both inside and outside of power saw the political benefits that could spring from decentralization.

Locked out of the national government in the postwar period, French Socialists adopted the mantra of decentralization as a way to expand their local support base. The tradition of that central state in the hands of the Right combined with the “nexus of state and big capitalism” forced French Socialists to embrace a coalition of “not only the working class but peasants and

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<sup>52</sup> See SCHMIDT, *supra* note 6, at 88.

<sup>53</sup> GOUREVITCH, *supra* note 48, at 32-3.

<sup>54</sup> See *id.* at 28.

small businesses” attached to local government, morphing the Left’s ideology accordingly.<sup>55</sup> For the Socialists, a strong commitment to a program “promoting local liberty [was] associated with a short-term political calculation to retain power at the local level, even if it was lost at the national, as well as with a long-term electoral strategy to gain and retain the allegiance of a changing electorate.”<sup>56</sup> The Left campaigned on slogans such as “From municipal management to communal self-managements;” “Decentralize and debureaucratize;” and “Break statism.”<sup>57</sup> The result was that that the Socialists were elected to power in the 1980s with a clear mandate to embrace decentralization.

This mandate was further amplified by an increased sense within French society that decentralization was in the national interest. Historically, embracing local government was portrayed as encouraging the fragmentation of France itself, and French nationalism was viewed as mutually exclusive with centralization. Loughlin points to the general strike of May 1968 again as a turning point where the Socialists concluded “excessive centralization and uniformity [was] a crisis of democracy, which they interpreted as both participatory and representative democracy.”<sup>58</sup> As discussed above, there was a prevailing notion within French political circles that the political and administrative process had become “blocked” due to an overriding preoccupation with local matters, inhibiting the central government from effecting larger policy proposals.<sup>59</sup> Opening up new avenues for decision-making had suddenly become a pressing national need.

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<sup>55</sup> KEATINGS & HAINSWORTH, *supra* note 1, at 55.

<sup>56</sup> See SCHMIDT, *supra* note 6, at 389.

<sup>57</sup> *Id.* at 103.

<sup>58</sup> See LOUGHLIN, *supra* note 7, at 66.

<sup>59</sup> See *id.* at 67; see also Schmidt, *supra* note 37.

Simultaneously, the expansion of the welfare state imposed increased technical and financial requirements on communes.<sup>60</sup> While mayors had always chafed at the prefect's use of political tutelage, stricter controls upon local spending and development in the form of financial tutelage combined with increasing financial burdens pushed the system to a tipping point. At a time when the scope of government was expanding, the center was increasing the costs of local government. Absent any formal increase in political autonomy, this dynamic infuriated the mayors, adding bite to the usual blame cast upon the center.

Decentralization appeared to be the magic bullet. Not only did the Socialists view decentralization as the process that could unblock the system, improving governance in the center and periphery via an enthusiastic citizenry, but decentralization promised to streamline and modernize French politics.<sup>61</sup> Mark Kesselman cites a Socialist deputy on the aims of the decentralization project:

Decentralization is not synonymous with weakening the state. Quite the contrary. By intervening only in those sectors that are key for the nation's future, and relying on powerful and democratic local governments, the efficacy of state intervention cannot fail to grow.<sup>62</sup>

Thus, while the *loi Defferre* appear to have caught scholars like Gourevitch completely by surprise,<sup>63</sup> growing local irritation and the 1981 election of a Socialist party with strength in the communes aligned the political stars for some attempt at decentralization of political decision-making.

### III. The *loi Defferre*

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<sup>60</sup> See Kesselman, *supra* note 18, at 166.

<sup>61</sup> See LOUGHLIN, *supra* note 7, at 67.

<sup>62</sup> See Kesselman, *supra* note 18, at 180.

<sup>63</sup> Gourevitch predicted that in 1980 that "over the next ten years, we can expect little dramatic change in the territorial distribution of powers in France...political tensions will continue to block any significant decentralization of powers." GOUREVITCH, *supra* note 48, at 235.

After the Socialists were elected in 1981, decentralization became the government's "grand affaire." Gaston Defferre, the Minister of the Interior and Decentralization, worked quickly to introduce a decentralization framework law that could withstand institutional opposition and make the process of decentralization irreversible.<sup>64</sup> The *loi Defferre* had three key thrusts designed to shift decision-making authority away from the central state:

- 1) The power of the prefects was greatly diminished, particularly over the communes.

The *a priori* tutelage power over financial and legal decisions was replaced with *a posteriori* supervision, which permitted the prefect to appeal communal decisions to an administrative court *only* after an action was taken. While the prefect gained additional powers to direct state field services, the diminished stature of the office was evident "with the transfer of executive offices, buildings, cars, and even furniture" as executive power was shifted to various local officials.<sup>65</sup> For a brief time, even the title of prefect was replaced with the more symbolic title of *commissaire de la République* until tradition compelled the Right to restore the old title upon returning to power in 1986.<sup>66</sup>

- 2) Executive control over the departments was also shifted from the prefects to the democratically elected department presidents. What had previously been a democratically elected figurehead was transformed by decentralization into "one of the coveted positions in French local government."<sup>67</sup> According to Cole, the departments emerged from the first round of French decentralization as "the clear

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<sup>64</sup> See SCHMIDT, *supra* note 6, at 107.

<sup>65</sup> *Id.* at 116.

<sup>66</sup> See ELGIE & GRIGGS, *supra* note 12, at 75.

<sup>67</sup> COLE, *supra* note 9, at 122.

victors, invested with larger budgets, more staff and more service delivery responsibilities.”<sup>68</sup>

- 3) The *loi Defferre* also transformed the regional councils from administrative organs to legal subnational governments. Though it would take until 1986 for elections to be organized, the regional councils ceased to be policy advisory bodies and became democratically legitimate institutions with enhanced constitutional and political status.<sup>69</sup>

Defferre emphasized an immediate transfer of executive authority to the communes, departments, and, eventually, the regional councils in order to gain local support for decentralization before entrenched interests could narrow the scope of the reforms.<sup>70</sup> Indeed political opposition mobilized within the Socialist Party such that while the fundamentals of *loi Defferre* were irreversible, many the specific details required to logically decentralize the French state were left incomplete.

In terms of legal capacity, *loi Defferre* actually expanded the size of French government. Note that decentralization expanded the powers of the communes and departments without abolishing the prefect and established an additional layer of government, the regional council, without fundamentally altering the legal competencies of any unit—even the prefects retained the foundations of their older authority. Further, none of the 36,000 communes were eliminated despite the administrative incapacity of many smaller communes to take advantage of their new powers.

Loughlin writes:

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<sup>68</sup> *Id.*

<sup>69</sup> See LOUGHLIN, *supra* note 7, at 69.

<sup>70</sup> See SCHMIDT, *supra* note 6 at 107-8; see also Jean-Claude Douence, *The Evolution of the 1982 Regional Reforms: An Overview*, in THE END OF THE FRENCH UNITARY STATE?: TEN YEARS OF REGIONALIZATION IN FRANCE (1982-1992) 11-13 (John Loughlin & Sonia Mazey eds., Frank Cass & Co., 1995).

[The French state] does not seem able to suppress previously existing institutions when new ones are created, thus leading to a very messy situation. This is known as the “*millefeuille institutional français*,” after the little gooey cake known as the “*millefeuille*,” which contains many interpenetrating layers of cream and pastry.<sup>71</sup>

The result of this *millefeuille* is that intergovernmental relations became increasingly antagonistic and chaotic, “a wonderful mess” according to one official.<sup>72</sup> Decentralization fragmented decision making and dramatically increased the number of veto-points in government.<sup>73</sup> Continued efforts to tweak and reform the initial *loi Defferre* appear to reflect an effort by the center to institute a system of checks and balances among the layers of subnational government.<sup>74</sup> Nevertheless, decentralization provided the foundation for a true division of responsibilities between localities, larger regions, and the national government.

The problematic limitation is that the central government refused to institute any sort of hierarchy among the communes, departments, and regions.<sup>75</sup> Beginning in 1983 and continuing throughout the 1980s, the government began transferring political competencies to the different subnational units. The government intended to promote subnational specialization by vesting complete responsibility for a given function to a single layer of government; however, absent a legal hierarchy, this process transformed into a *de facto* power grab by different levels of local politicians.<sup>76</sup> The government appeared to anticipate that the subnational governments would come to a consensus about which competencies each unit could best serve, but this dismissed practical realities: communes were historically important but varied wildly in terms of their actual capacity; departments had been under the thumb of prefects for centuries, and the regions were a new, untested, and ill-defined. At each level, officials had no incentive to work with each

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<sup>71</sup> LOUGHLIN, *supra* note 7, at 64.

<sup>72</sup> Lynne Louise Bernier, *Socialist Intergovernmental Policy During the Mitterrand Era*, 22 PUBLIUS: THE JOURNAL OF FEDERALISM 47, 47 (1992).

<sup>73</sup> Telephone interview with Martin Schain, Professor of Politics, New York University (Dec. 3, 2009).

<sup>74</sup> See Bernier, *supra* note 71, at 54.

<sup>75</sup> See Kesselman, *supra* note 18, at 172.

<sup>76</sup> *Id.*

other when they could turn to the national government for resources. Instead, as Lynne Louise Bernier illustrates, the subnational unit's newfound discretion encouraged officials to pursue a strategy of "each man for himself" which brings more government than citizens want or their taxes logically support.<sup>77</sup>

Certainly decentralization encouraged more government, but it is arguable whether the practical effect of shifting power within French government actually served to promote local democracy. Defferre's eagerness to accommodate the interests of entrenched *notables* and administrative officials challenged the depth of the initial decentralization efforts. In fact, the shift of executive powers to local officials actually served to increase the powers of the *notables*—thus, from the beginning, decentralization was perpetuating already existing interests, limiting the reforms' ability to alter the government. Yves Mény was critical of *loi Defferre*:

[There is] no tax reform, no territorial reform, no hierarchy between the different levels [of subnational government], no popular participation. In short anything that might have offended the sensitivities of the notables, the squeamishness of the senators, or local egoisms was prudently erased from the "most important reform of the Presidency."<sup>78</sup>

More damaging to democratization, decentralization fundamentally failed to address the practice of *cumul des mandats*. While a limited law was passed in December 1985, its effects were "considerably more modest" than the Socialists planned, and the law limited officials to holding only two "major political mandates" with numerous legal and practical ways to exploit the spirit of the law.<sup>79</sup> Despite numerous efforts to reform the practice, both after *loi Defferre* and again in the 1990s, the *cumul* remains highly entrenched:

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<sup>77</sup> Bernier, *supra* note 72, at 53.

<sup>78</sup> JONAH D. LEVY, *TOCQUEVILLE'S REVENGE: STATE, SOCIETY, AND ECONOMY IN CONTEMPORARY FRANCE* 138 (Harvard Univ. Press, 1999), *citing* Yves Mény, *La Corruption de la République* (Fayard 1992).

<sup>79</sup> SCHMIDT, *supra* note 6, at 144-5.



Among regional presidents, 80.8 per cent held two or three offices as did 92 per cent of departmental presidents. The most common combination, however, is to combine the office of mayor with a national position: the deputy-mayor or the senator-mayor.<sup>80</sup>

The *cumul* has been called the “real plague” of French politics,<sup>81</sup> since it simultaneously ensures that political *notables* have multiple opportunities to remain in power no matter the political mood—the more offices one holds, the easier it is to cling to power—and it makes legally-equal office holders unequal by virtue of the opportunity to add additional powers via other offices.<sup>82</sup> As a result, the system has been accused of limiting accountability, reinforcing “oligarchic and isolationist” tendencies among *notables*, and, most relevantly, obstructing the purposes of decentralization.<sup>83</sup>

A number of commentators on decentralization believed the process served to formalize the previously informal “domination of local politics by *notables* and, especially, of the big cities,”<sup>84</sup> amplifying the political honeycomb devised by Theonig rather than moving toward actual local governance. Critics of the reforms viewed them as minor alterations to the center-periphery relation, reinforcing rather than revolutionizing the current system.<sup>85</sup> At worst, the chaos decentralization introduced between and among subnational governments and the center did a disservice to average citizens, and a cynical argument could be made that decentralization had “mostly benefited local political...as well as local administrators” while citizens were “great

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<sup>80</sup> LOUGHLIN, *supra* note 7, at 144; see also Andrew Knapp, *The Cumul des Mandats, Local Power and Political Parties in France*, 14 W. Eur. Pol. 18 (1991).

<sup>81</sup> Vincent Hoffman-Martinot, *State and Local Government Reforms in France and Germany*, in REFORM AND MODERNIZATION IN URBAN GOVERNMENT IN FRANCE 235 (Vincent Hoffman-Martinot & Hellmut Wollmann eds., vs verlag 2006).

<sup>82</sup> Negrier, *supra* note 22, at 136-7.

<sup>83</sup> LOUGHLIN, *supra* note 7, at 144.

<sup>84</sup> *Id.* at 126.

<sup>85</sup> See ELGIE & GRIGGS, *supra* note 12, at 73.

absentees.”<sup>86</sup> Looked at in the best light, decentralization in the 1980s was perhaps only incomplete, as later efforts at decentralization in the ensuing decades would reveal.

#### IV. Impact on Local Government

Though there is no question *loi Defferre* increased the political power of the communes and departments, the units of government closest to the people, that does not necessary equate with any increase in “local democracy.” Decentralization was effective in encouraging subnational governments to increase their spending, with the central government promising to fund the increased costs of governance.<sup>87</sup> Nonetheless, increased local government activity need not correlate with the desires of the citizenry. In fact, the desires of the nonpolitical classes went largely unconsidered during the formulation and implementation of decentralization. By the conclusion of the Defferre’s reforms and the shift to a cohabitation government in 1986, the degree to which decentralization had improved government for the average person was open for debate and arguably marginal.<sup>88</sup>

First, the effort to shift power from center to periphery did not facially include average citizens but rather emphasized the role political *notables* would have addressing local concerns. Though the increase in elected offices in the regions and the elevated status of the departments may have created more opportunities for political participation, the failure to reform the *cumul des mandats* ensured that these positions would be filled by the generally the same political actors. The consensus of the government to avoid restricting multiple office-holding (*décumul*) contrasted directly with the views of the majority of the French population in support of limiting the practice.<sup>89</sup>

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<sup>86</sup> LOUGHLIN, *supra* note 7, at 73.

<sup>87</sup> Bernier, *supra* note 72, at 49-51.

<sup>88</sup> See generally *id.* at 65.

<sup>89</sup> See *id.*, at 144, citing IPSOS opinion poll (2000), available at <http://www.ipsos.fr/Canalipsos/poll/7142.asp>.

Second, the government's maintenance of the *millefeuille institutional français* continued to cloud local accountability. The division of responsibilities between three layers of subnational government and the continuing existence of the prefects inhibited citizens from locating the nexus of decision-making, which likely minimized any feeling of representative connection to the government.<sup>90</sup> Indeed, by refusing to create any sort of hierarchy among subnational levels, the center provided an easy outlet for local politicians to continue to call upon the state to act as the final referee in politics. Instead of attributing political problems to overcentralization, local politicians now have a variety of targets upon which to deflect criticism. According to Loughlin and Sonia Mazey, the cross-regulation model or "honeycomb" conception of government that existed prior to *loi Defferre* has transformed into a more "open" albeit "chaotic" form of local governance.<sup>91</sup> Functionally, however, an open and chaotic conception of local politics does not "unblock" French politics any better than a insulated system.

Further, Loughlin argues that the opacity of governance makes it impossible for average citizens to relate to or even to comprehend decentralization in a positive manner.<sup>92</sup> Hoffman-Martinot explains how this has alienated citizens from the political process:

Paradoxically the majority of citizens has never had more means and potential influence on policy-making - more competences, more independence, more deterrent power, more receptive elected representatives - than today whereas at the same time citizens have never felt so frustrated as they find it extremely difficult to voice their preferences and make them prevail. This paradox is illustrated by such general phenomena as non-voting, electoral volatility, non re-election of incumbents and growing importance given to issue politics.<sup>93</sup>

Schmidt defends the results of decentralization as a product of the acquiescence of average citizens, though she concedes that perhaps the local population was "unaware" of

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<sup>90</sup> Albert Mabileau et al., *Participation and the Local Polity in France and Britain*, in LOCAL POLITICS AND PARTICIPATION IN BRITAIN AND FRANCE 251 (Albert Mabileau et al. eds., Cambridge Univ. Press 1989).

<sup>91</sup> John Loughlin & Sonia Mazey, *Introduction*, *supra* note 70, at 8.

<sup>92</sup> LOUGHLIN, *supra* note 7, at 181.

<sup>93</sup> Hoffman-Martinot, *supra* note 78, at 236-7.

decentralization.<sup>94</sup> She notes that the Socialists' initial desire to boost local democracy by tying local associations, civic or otherwise, to government was abandoned because *autogestionnaire* political activism "had all but died" by the mid-1980s.<sup>95</sup> This ignores, however, the increase in associational activity that Hoffman-Martinot and Martin Schain have identified in France at the same time.<sup>96</sup> It also dismisses the fact that without government support for associational life, private interests in the form of lobbies are not considered legitimate.<sup>97</sup>

Schmidt attempts to argue that democratic accountability has affected *notables*, but she heavily circumscribes this type of democratization:

[I]t is a democracy that is controlled by the local notables and carried out through formal governmental channels. Thus, although decentralization has indeed produced a greater local democracy, it is one characterized by pluralism in the structures of local government and in contests for local office; it has yet to reach the populace directly.<sup>98</sup>

Ultimately, it would appear *loi Defferre* had a number of unintended consequences for local democracy. Though the Socialists believe decentralization was an essential mechanism for increasing political participation and "to give the state back," Alistair Cole cautions that the legacy of decentralization in the 1980s was "one of corruption, municipal debt and the greater input of private sector actors."<sup>99</sup>

## V. Conclusion

Almost three decades since the *loi Defferre*, decentralization has proven to be an irreversible fact of intergovernmental relations in France. The advent of European unification has further emphasized the role of subnational governments, but, already by the early 1990s,

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<sup>94</sup> See SCHMIDT, *supra* note 6, at 186.

<sup>95</sup> *Id.* at 149-50.

<sup>96</sup> See Hoffman-Martinot, *supra* note 78; Schain, *supra* note 73.

<sup>97</sup> See 2, *supra* note 21, at 134-5; Schain, *supra* note 73.

<sup>98</sup> See SCHMIDT, *supra* note 6, at 289; *c.f.* Schmidt also concludes that instead of "direct democracy," decentralization required local *notables* to interact with private organizations to craft a more "representative democracy."

<sup>99</sup> COLE, *supra* note 9, at 130.

local politicians were acting less like bureaucratic managers and more like market entrepreneurs.<sup>100</sup> While many decisions about localities are now made by local politicians, the integration of French political elites into one network raises questions whether these decisions are responding to the actual concerns of the French citizenry.

If Hoffman-Martinot's data is any indication, decentralization has not produced such positive effects among the average French citizen. According to Schmidt, decentralization was largely ignored by French citizens in the face of more pressing economic and social realities during the 1980s. No matter what perspective, it is difficult to see how decentralization revitalized democracy in the way Socialists intended. Political pragmatism stripped away many of the Socialist's higher aspirations with decentralization, and entrenched political interests, the *cumul*, continue to ensure decentralization does not radically change the French state. Legitimizing and developing civic participation fell by the wayside during *loi Defferre*, and, as a result, the public's connection with government remains fundamentally unchanged from the immediate postwar period. In the end, this means that the French government is still susceptible to dramatic social and economic shocks, which cannot be in the national interest of the indivisible Republic.

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<sup>100</sup> See Bernier, *supra* note 72, at 49.