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***The French Fifth Republic***

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“Dans le tumulte des hommes et des événements, la solitude était ma tentation. Maintenant, elle est mon amie. De quelle autre se contenter lorsqu’on a rencontré l’Histoire ?”<sup>1</sup>

Charles de Gaulle

### **The Origins of the Fifth Republic**

In the early 1950s, French political life was dominated by its colonial wars. Following the military defeat and humiliation of Dien Bien Phu, in May 1954, the government of Pierre Mendès France was forced to negotiate the permanent withdrawal of its troops from Indo-China, putting an end to nearly eight years of conflict.<sup>2</sup> For France, this defeat marked the beginning of the decolonisation process in all its colonies. Even though both Morocco and Tunisia gained independence without too much struggle in 1956, the situation was to be very different in Algeria where the links with the Hexagon were deeply rooted since 1830.<sup>3</sup> “Algeria was the trigger of the crises, which was fatal to the regime”, stressed French political scientist, René Raymond. It indeed initiated the beginning of a conflict that was to drown the Fourth Republic in a severe institutional crisis.

Despite commendable achievements,<sup>4</sup> the Fourth Republic remained unloved by many. Known as *la mal aimée*,<sup>5</sup> it comprised

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<sup>1</sup> “In the tumult of men and events, solitude was my temptation. Now she is my friend. How else to be content when we met history?”

<sup>2</sup> In June 1954, having signed the said agreement, newly appointed President, Pierre Mendès France announced to the French Parliament that he had achieved his aim of ‘an honourable settlement’ to end a war that had cost at least 300,000 lives.

<sup>3</sup> See H. Spruyt (2005) *Ending Empire: Contested Sovereignty and Territorial Partition* (Ithaca, NY: Cornell UP): Ch.3.

<sup>4</sup> A. Knapp & V. Wright (2006) *The Government and Politics of France* (London: Routledge): pp.49-50. The Fourth Republic ‘achieved an extraordinary feat of reconstruction after five years of war and enemy occupation’. It marked the start of France’s ‘economic miracle’ and most importantly a revolutionary period of modernisation. Many improvements were also made in terms of social security and European construction.

<sup>5</sup> See J. Barsalou (1964) *La mal aimée: histoire de la IVe République*, (Paris: Plon): p.9.

of a strong parliamentary system and a weak executive power. This institutional mechanism was based on the requirements of the French republican tradition of 1877,<sup>6</sup> which could also be found in the Grévy Constitution. According to this tradition, the executive power should, in no way, antagonise the national will that is expressed through its elected representatives. With the right of dissolution falling into disuse<sup>7</sup> and an executive power that barely existed, predominance was given to a parliamentary monism, in which the assemblies were 'almighty'.<sup>8</sup> Favoured by the implementation of proportional representation, the need for alliances between the various political parties became a necessary requisite to obtain a governing majority. Hence, despite the tripartite alliance between the MRP (*Mouvement Républicain Populaire*), the PCF (*Parti Communiste Français*), and the SFIO (*Section Française de l'Internationale Ouvrière*), proportional representation caused the creation of a very unstable majority. This multiparty anarchy led to great ministerial instability that was considered to be the predominant reason for the collapse of the Fourth Republic. Between 1947 and 1959, a total of 24 governments succeeded one another;<sup>9</sup> all of which were unable to implement any consistent policy towards Algeria. Somehow, the institutional mechanisms of the Fourth Republic underwent an involution that led to a form of restoration of the Third Republic.<sup>10</sup> For Pierre Avril and Jean Gicquel, the Fourth Republic was simply stuck in between two republics.<sup>11</sup>

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<sup>6</sup> See e.g. P. Ségur (2014) *La Ve République* (Paris: Ellipses): p.7.

<sup>7</sup> During the Third Republic, the right of dissolution which was held by the head of state was only used once under MacMahon in 1877. Under the Fourth Republic, the right was then held by the head of the government. However, the conditions that enabled its implementation were so difficult that it was used only once, in 1955.

<sup>8</sup> According to Article 3 of the constitution of 1946, national sovereignty vests in the people who exercise it through their representatives.

<sup>9</sup> At that time, a government would, on average, not last more than six months. Only two Prime Ministers, Henri Queuille and Guy Mollet lasted more than a year. In a sort of ministerial waltz, the Fourth Republic would also undergo a period of 256 days without a government.

<sup>10</sup> See the pertinent explanation of J. Georget, *Critiques et Réformes des constitutions de la République*, Thesis, (Rennes 1958; Paris, Celse, 1959 et 1960).

<sup>11</sup> See P. Avril & J. Gicquel, '*La IVe entre deux républiques*' (1996) *Pouvoirs* 76: pp.27-43.

Due to severe financial and international difficulties, French public opinion was divided between indifference and hostility towards a regime that became more and more discredited. In January 1958, expressing a consensus view, President René Coty warned that the “[...] basic institutions are no longer in tune with the rhythm of modern times”. This was later virulently reiterated by both de Gaulle and Michel Debré, as well as by many communist leaders. With the existing institutional inability to resolve the Algerian crisis and under the pressure of a possible *coup d’Etat* by the French military leaders based in Algiers following the events of 13<sup>th</sup> May,<sup>12</sup> the main leading parties comprising the Right, the Radicals, and the SFIO gradually aligned themselves to seek the return of General de Gaulle as head of the government. ‘The Man of June 18, 1940’ was, once more, considered to be the only alternative to the on-going crisis.

De Gaulle, leader of Free France during World War II and head of the interim government of the French Republic between 1944 and 1946, had retired from the political life in 1953, beginning his famous *traversée du désert*. During this period, although he remained attentive to on-going events, de Gaulle barely intervened in the public and the political sphere. It is only following the famous ‘*Vive de Gaulle*’ of the General Salan, that he declared himself ‘ready to assume the powers of the Republic.’ He nevertheless insisted on going through the regular processes of forming a Fourth Republic government. On 29<sup>th</sup> May, addressing the Parliament, President René Coty himself suggested that he would resign if the deputies disapproved the return to power of the ‘most illustrious Frenchman’.<sup>13</sup> Two days later, de Gaulle delivered a

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<sup>12</sup> On 13<sup>th</sup> May, a popular tribute to three French soldiers who were executed by the FLN (*Front de libération nationale*) turned into an insurrection with the complicity of dissident army officers and the active support of Parisian militants. Storming into the government, symbol of the Algerian republic, they created a *Comité de salut public* (Committee of Public Safety), which was placed under a Gaullist, General Massu, in order to promote the ascension of Charles de Gaulle to the French presidency.

<sup>13</sup> Full quote of President Coty: “In the peril of the mother land and the republic, I turn myself toward the most illustrious Frenchman. Toward the man who, during the darkest years of our history, was our chief, for the re-conquest of our liberties and who, having thus realised around himself national unanimity, refused a dictatorship in order to reform the republic.” Coty then asked de

brief statement to the National Assembly, following which he was invested with 329 votes against 224.<sup>14</sup> He then left Colombey-les-Deux-Eglises to become the last President of the Council under the Fourth Republic, subsequently to which he formed a government of national union that excluded the French Communist Party.

Major concerns however remained. On 2<sup>nd</sup> and 3<sup>rd</sup> June, following the specific conditions that were more or less imposed by de Gaulle in his installation speech, the French National Assembly voted in favour of three consecutive laws of tremendous importance. The first two laws granted special powers to the government in regard to Algeria, as well as full legislative powers to govern by decree for a period of six months. Last but not least, a constitutional law was adopted in order to modify the amending process of the constitution and entrust the government with the drafting of a new constitution to be approved by referendum. For some, this not only went against Article 9 of the Constitution of 1946,<sup>15</sup> but also against the spirit of the Fourth Republic. The procedure pertaining to the drafting of a new constitution established by the constitutional law of 3<sup>rd</sup> June 1958, however, contained certain guarantees. These guarantees, which are today the centrepiece of the current institutions, were meant to safeguard the essential interests of the Parliament. As such, the following five principles were required to be included in the preparation of the new constitution: universal suffrage (as a guarantee of the democratic legitimacy of the future regime); separation of powers (which forbade any form of dictatorship); political responsibility of the government (ensuring the parliamentary nature of the institutions); the independence of the judiciary; and organisation of the relationship between the

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Gaulle to examine within the framework of republican legality the steps necessary to form a government of national union.

<sup>14</sup> Among the opposition were the communists, and 49 socialists out of 95, including François Mitterrand and Pierre Mendès France who both feared a military coup by the General.

<sup>15</sup> The constitution of 1946 provided in its Article 90 a revision process at the sole responsibility of the Parliament and the people, under strict conditions. Thus, the constitutional law of June transfers the constitutional competence of the Parliament to the government.

Republic and its associated people.<sup>16</sup> Before submitting the draft constitution to a referendum, the government was required to gather the opinion of an advisory committee composed of two-thirds of the deputies (appointed by competent commissions) and the *Conseil d'Etat* (Council of State).<sup>17</sup>

On 4<sup>th</sup> September 1958, which marked the anniversary date of the proclamation of the 1870 Republic, the General presented the draft constitution to the French citizens in a speech delivered at the very symbolic *Place de la République*, in Paris. Most of the political formations approved the proposal; except for the Communists, the Poujadists, and the Mendesists who persistently advocated against it. With a historic 80 per cent of voters in favour of the new constitution, the ratification referendum of 28<sup>th</sup> September was an immense success. The constitution was consequently enacted on 4<sup>th</sup> October 1958. Although the constitutional process had come to an end, a brief period of transition followed, during which 18 organic laws were adopted at the discretion of the government so as to complete the constitution. The cadence was given by de Gaulle. The French Fifth Republic was born!

### **De Gaulle and his Vision of the French State**

The General was known to have entertained over the years a 'certain idea of France.' For Philippe de Saint-Robert, de Gaulle's unwavering commitment was to restore the idea of the state in France, so as to restore both its unity and its standing in the world. This idea was at the origin of de Gaulle's own concept of the state — a legitimate, democratic, and respected state — as well as of his very personal conception of the presidency,<sup>18</sup> the two

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<sup>16</sup> Ségur (2014): p.11.

<sup>17</sup> The *Conseil d'État* is the highest administrative jurisdiction. It is the final arbiter of cases relating to executive power, local authorities, independent public authorities, public administration agencies, or any other agency invested with public authority.

<sup>18</sup> From 1848 to 1958, the presidential office was in constant decline. The main characteristic of the constitution of the Fifth Republic was therefore to radically modify the presidential status within a parliamentary system. In the Bayeux speeches, speaking on the role of the head of state, de Gaulle said that, "The

essential components of which are natural, moderate, and hierarchic authority, and active arbitration.<sup>19</sup> In the absence of the said elements, the General believed that the state could risk drifting towards dictatorship. It is this notion of the state that is considered to be the fundamental concept of Gaullist discourse, both during de Gaulle's presidency and thereafter. An institutional system based on this overarching idea gave rise to a unique type of parliamentary regime.

The constitutional pragmatism of de Gaulle was founded on two major streams: the representative stream and the democratic stream. The first one was characterised by a strong executive power, a more rationalised parliamentary regime, and the resort to the referendum; while the latter, which conferred a deeper significance to the representative system, was based upon direct modes of expression with regard to sovereignty.<sup>20</sup> Article 3(1) of the 1958 Constitution most reflects this dual nature of the regime: "National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum."

The elaboration of the Fifth Republic was thus inspired by two fundamental principles that were first expressed by de Gaulle

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executive power must [therefore] proceed from the head of state, placed above parties, elected by a college that encompasses the Parliament but that is much larger than it and made up so that he can be the President of the French Union as well as that of the Republic. It behoves the head of state to pay attention to the general interest when it comes to choosing men with the prevailing orientation of the Parliament. The mission is his to appoint ministers and, first of all, obviously, the Prime Minister, who will conduct policies and lead the work of the government. The head of state's is the function of enabling laws and issuing decrees, because the former and the latter involve citizens towards the state. His is the task of presiding over cabinet meetings and exerting that influence of the continuity from which a nation cannot be deprived. His is the ability of serving as a referee above political contingencies, either ordinarily in attending cabinet meetings, or, in moments of serious confusion, in inviting citizens to express their sovereign decision in elections. His is the duty of being the warrant of national independence and of treaties concluded by France, should the fatherland ever be endangered."

<sup>19</sup> See V. Alibert-Fabre, 'La pensée constitutionnelle du général de Gaulle à « l'épreuve des circonstances »' (1990) *Revue française de science politique* 40(5): pp.699-713.

<sup>20</sup> Ibid: p.710.

during the Bayeux speeches of 16<sup>th</sup> June 1946.<sup>21</sup> These principles were the separation of powers and the balance of powers. Reiterated on several occasions, including during his declaration to the media on 27<sup>th</sup> August and his Epinal speech on 29<sup>th</sup> September, these two principles were the starting point of the General's vision for France; a vision in which a rigorous separation and a strong balance of the three traditional powers, the legislature, the executive, and the judiciary, were to prevail. For de Gaulle, the initial aim was to return its internal sovereignty to the nation by providing it with the necessary tools and mechanisms to efficiently participate in political life, such as the possibility to dissolve the Assembly, the use of referendums, and implemented in 1962, the election of the head of state by direct universal suffrage. A complementary objective was to guarantee the sustainability of this new institutional balance through the creation of a Constitutional Council in order to avoid the instabilities of the past. For De Gaulle, legitimacy implied only one prerequisite: the need to ensure "the utmost interest of the country."<sup>22</sup>

In search of a lost legitimacy, the constitution of the Fifth Republic was therefore to reflect a philosophy and an institutional outline that were debated even prior to the establishment of the Fourth Republic. It is based upon the said principles that the then Minister of Justice, Michel Debré, began the drafting of the new constitution. This led many political scientists to believe that the constitution of 1958 was, for the most part, based on the Bayeux Constitution and that it was, as a result, drafted to match the personal requirements of the General. However, Debré insisted throughout his interventions that this was not a personal constitution which embodied the vision of de Gaulle alone. Debré, a strong liberal, had himself influenced its preparation in various ways so as to make it more conducive to values of freedom that were similar to those found in the ideologies of Montesquieu, Constant, or even Prévost-Paradol. René Capitant, another exceptional jurist of that time, also influenced the constitution at

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<sup>21</sup> After the Appeal of 18<sup>th</sup> June 1940, these speeches were some of the most important speeches of General de Gaulle. The place and time were also symbolic as Bayeux was the first town to be liberated by the Allies during World War II.

<sup>22</sup> See Charles de Gaulle's Address in Bayeux (Normandy), 16<sup>th</sup> June 1946.



two major levels by making sure that the logic of the parliamentary regime was maintained, and most importantly, by restoring the referendum process. Moreover, State Ministers such as Guy Mollet, Pflimlin, Louis Jacquinot, and Félix Houphouët-Boigny played a major role, for instance, in regulating the mechanism pertaining to the motion of censure. As such, the preparation of the 1958 Constitution reflects a compromise between the ideas of de Gaulle, Debré, and the parliamentarians.

But most importantly, according to Michel Debré, the real ambition of this new constitution was to correct the shortcomings of the republican institutions that existed since the Third Republic.<sup>23</sup> The main concern was therefore the need to overcome this unresolved *immobilisme*, which characterised the Fourth Republic's discredited *régime des partis*. In 1978, expressing his thoughts on the *raison d'être* and the evolution of the constitution of 1958, Debré wrote,

“The principal merit of the Fifth Republic is that it restored to the French people the freedom to determine their own destiny; never had France voted so heavily and, what is more important, never had the French people turned out in such numbers and in such freedom to cast their votes. May their continued vigilance ensure that they do not lose what they owe to the tragic circumstances that gave one man, the General de Gaulle, a personal legitimacy which, as a good republican, he used to restore legitimacy to the Republic. May those who lead, educate or inform France play neither with the moral principles of society, nor with the public interest, nor with national sovereignty!”<sup>24</sup>

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<sup>23</sup> See M. Debré, ‘*La Constitution de 1958: sa raison d'être, son évolution*’ (1978) *Revue française de science politique* 28(5): p.827.

<sup>24</sup> *Ibid.*

## **The Major Concepts Developed in the Constitution of 1958**

Subsequent to the development of this very singular vision of the French state, major concepts were revisited in the 1958 Constitution: the concept of the state, the nation, and the republic. This was mostly due to the perception of de Gaulle who considered that the notions of the state and of the nation represented the two indispensable concepts that were instrumental for the survival of the Republic. This mind-set was best illustrated by Debré: “They should now take care not to lose what they owe to tragic circumstances, which established a personal legitimacy for one man, General de Gaulle, which he, a good republican, used to restore the legitimacy of the Republic”.<sup>25</sup>

In the eighteenth century, the Enlightenment philosophy and the well-known social contract theories developed by Jean-Jacques Rousseau confirmed the theoretical demarcations of the state. Similarly, as a historical and political reality, the nation became since the French Revolution, a legal concept of its own. According to Article 3 of the Declaration of Human and Civic Rights of 26<sup>th</sup> August 1789, “The principle of any sovereignty lies primarily in the nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.” Under this principle, the nation became the source of various powers and replaced the divine law that was once used to legitimise monarchy. Eventually, it modified the conception of the state by subjecting it to the principle of democracy. Today, both the state and the nation appear as two realities that are closely linked to one another which, during the nineteenth century, resulted in the emergence of a new concept: the concept of the state-nation. According to Ulla Holm, following the 1789 revolution, the nation was elevated to the condition of statehood, to the point that “... the nation became a state and the state became the embodiment of the nation. The two concepts became totally fused.” In 1988, the then Socialist Minister of Defence, Jean-Pierre Chevènement wrote,

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<sup>25</sup> Ibid: p.14.

“The revolution, and the republic which grew out of 1789, shed light upon the French concept of the nation. This is a political notion because the nation perceives of itself as a body of citizens. The concept of the nation is based on the idea of the social contract between the individual citizen and the state-nation, where every citizen is a part of a whole in a universal perspective. [...] A nation that bases its existence on a contractual and universal concept is a political nation. Only the political nation is able to create the political identity of one people thus preventing the interests of the individual from controlling society. Without a common will, there is no nation. Without a voluntary contract, there is no nation.”

Within the 1958 Constitution, these concepts form a triptych that is intrinsically linked to President of the Republic who represents the nation but also embodies the authority of the state by ensuring its continuity, as well as the proper functioning of the public authorities (Article 5). The President is in the 1958 text what he was intended to be in the Bayeux speeches: the personification of the nation.

### **The Redistribution of Powers among the Institutions of the Fifth Republic**

Often referred to as a ‘semi-presidential’<sup>26</sup> or a ‘dyadic’ system due to its double executive structure, the institutions of the French Fifth Republic borrow classical features from both the parliamentary and the presidential systems. In congruence with the French republican tradition, the system was however originally conceived to function as a parliamentary regime.<sup>27</sup> As analysed further below, it is only after the 1962 presidential election referendum that the regime developed a more hybrid nature, which makes it today a unique political regime. In fact,

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<sup>26</sup> For more details, see E. Veser, ‘Semi-Presidentialism – Duverger’s Concept – A New Political System Model’ (1998) *European Journal of Political Research*, 34(2): pp.201-224.

<sup>27</sup> Article 50 of the constitution clearly establishes the principle according to which the government is responsible to the National Assembly.

this institutional ‘mutation’ marked the starting point of the political dynamic of the Fifth Republic. Thus, the current system cannot be entirely compared to a presidential regime, which would imply, as in the case of the United States, a strict separation of powers between the President and the Parliament.<sup>28</sup> Similarly, it cannot be compared to a traditional parliamentary regime, as the executive is a direct product of the people’s will. This institutional innovation was mainly aimed at reversing the balance of power hitherto favourable to the Parliament.

Thus, based on the principles enunciated in the constitutional law of 1958, the constitution of the Fifth Republic operated a redistribution (or separation) of powers, which was fundamental in de Gaulle’s mind, by essentially focusing on three dimensions: a drastic reinforcement of both branches of the executive powers, the radical rationalisation of the legislative power, and the submission of the political power to the control of a judge. Developed by Locke and later on by Montesquieu in his well-known work, *L’Esprit des Lois* (The Spirit of the Laws), the principle of the separation of powers or ‘trias politica’ is meant to limit the arbitrary exercise of power and to prevent abuses related to the exercise of sovereignty. Even though the concept is today invoked in many democratic regimes, it took an even more singular meaning in France where the Constitutional Council itself, following its January 1987 decision, referred to it as ‘the French conception of the separation of powers.’ This conception is based on an interpretation of the Act of August 1790, which is itself based on an institutional practice dating back to the French Revolution. The originality of the French conception is essentially due to the limitation of the attributes of the judiciary in relation to public authority. Therefore, its association with the existence of a duality of jurisdictions enables it to distinguish itself from the classical theory.

As a matter of fact, the Gaullist constitutional perspective of power reconfigured altogether the political institutions of France. The recent evolution of the said institutions, which goes beyond

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<sup>28</sup> In the French system, the president can dissolve the National Assembly and the deputies can overthrow the government chosen by the president (Articles 20, 49 and 50 of the constitution).

the transformations of the constitution itself, demonstrates their ability to constantly adapt to diverse political contexts. This remarkable adaptability of the French political system enabled the emergence of the main institutions of the Fifth Republic, which are the Head of State, the Government, the Parliament, and the Constitutional Council. This eventually led many scholars to rethink the legal framework of the French political power.

### **The Main Institutions of the Fifth Republic**

The ambivalence of the French political system was institutionalised in the (unequal) bicephalic quality of its executive branch comprising of a President and a Prime Minister. Within this atypical system, the President of the Republic occupies, since the referendum of 1962, a predominant position that derives from the popular legitimacy he receives from his election by direct universal suffrage (Article 6). Elected by a majority of votes, he represents an incomparable political power that makes him the custodian of the national sovereignty retained by the people.<sup>29</sup> Although this is today considered to be consubstantial to the Fifth Republic, in 1962 it represented an important constitutional shift. As earlier mentioned, under both the Third and the Fourth Republics, power was almost entirely concentrated within the legislature while the head of state merely retained a symbolic authority. Many such as de Gaulle believed that the lack of a strong executive was one of the main causes for the failures of the preceding republics. It is in order to deal with the flaws of the previous Republics that the constitution of 1958 gave such substantial predominance to the head of state, who no longer plays the role of a simple figurehead in the French political system. In the words of General de Gaulle, the President's actions can no longer be limited 'to the inauguration of chrysanthemums.' As such, Article 5 of the constitution provides that "the President of the Republic shall see that the Constitution

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<sup>29</sup> According to the implementation of the two-round electoral system (top two run-off), if a presidential candidate obtains an absolute majority, he is immediately elected. Otherwise a second round is required, involving only the two candidates who led in the first round. This actually brings a structural change that goes beyond the traditional game of the political parties by putting in place a configuration which is more favourable to bipolarisation.

is observed. By his arbitration, he ensures the proper functioning of the public authorities and continuity of the State. He is the guarantor of national independence, territorial integrity and observance of treaties.”

Representing the main pillar of the institutions, the President of the Fifth Republic was in 1958 provided with numerous individual powers which require no counter-signature (Article 19). He has, for instance, the authority to appoint the Prime Minister and can terminate his period of office (Article 8 (1)). According to Article 12, he may also, after consultation with the Prime Minister and the presidents of the two assemblies, declare the National Assembly dissolved and may decide to speak before both houses of parliament convened in congress (Article 18).<sup>30</sup> The constitution of 1958 also confers on the President two powers that are unusual within the French republican tradition: the recourse to a referendum and the use of exceptional powers in times of crises. Consequently, the President can submit to referendum certain bills dealing with the organisation of public authority, with reforms concerning national economic, social, or environmental policy, or with public services associated with such policies (Article 11). However, his most important prerogatives appear during times of crises where he has recourse to emergency powers of public safety as per Article 16 of the constitution. Despite certain limitations,<sup>31</sup> this provision represents one of the most controversial points of the 1958 Constitution. If implemented, during a state of emergency the distribution of powers provided for by the constitution is suspended and the President assumes full power. This was somewhat restricted by the constitutional revision of July 2008, whereby after thirty days of a state of

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<sup>30</sup> Former President, Nicolas Sarkozy, used this right for the first time in June 2009. Article 18 enables an accentuation of the role of the President who does not put his political responsibility to risk when presenting his political programme to parliamentarians in place of the Prime Minister.

<sup>31</sup> For the President to have recourse to the emergency powers of Article 16, two conditions must be fulfilled simultaneously: there must be “a serious and immediate threat to institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments”; and the proper functioning of the constitutional public authorities must be interrupted. If he were to go beyond these limitations, the Parliament could convene itself as the High Court and dismiss him for a breach of his duties patently incompatible with his continuing in office.

emergency, it may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down concerning emergency powers in Article 16 are still met. In addition to the aforementioned powers, the President is also provided with a number of shared powers for which he must obtain the counter-signature of the Prime Minister and, in some specific cases, of the minister concerned. Also, his role as 'Head of the Armies' confers him the foremost position in regard to all defence-related matters (Article 15). Similarly, both the constitution and institutional practice recognise him with an eminent role in diplomacy, foreign policy being one of his reserved domains.

Given these distinctive features of the constitutional system, France is often defined by its presidential-executive style of leadership.<sup>32</sup> In order to further assert this supremacy, the head of state presides over the Council of Ministers (*Conseil des Ministres*). This solemn institution, which is specifically French, is the weekly closed-door collegial gathering of all the Ministers, at the *Salon Murat*. It is also the only government formation defined constitutionally and translates as such the organic autonomy of the government.<sup>33</sup> Since de Gaulle, it converted to a more efficient institution of government and became one of the means by which the presidential aspects of the Fifth Republic came to prevail over the parliamentary features of the regime. Hence, unlike in the Fourth Republic where he only played an honorary role, the President now convenes, approves the agenda of, and chairs the cabinet, and also signs the ordinances and decrees deliberated upon by the Ministers. All the important decisions taken by the government are therefore deliberated and announced at the said cabinet. Furthermore, according to Article 13, the President of the Republic makes appointments to the civil and military posts of the state. This power, which is shared with

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<sup>32</sup> According to Bell and Gaffney, "Notions of an exclusive 'French exceptionalism' are debatable, but France does distinguish itself at least from comparable 'Western' regimes of representative government through the emphasis it places on presidential power (and in the right circumstances upon the enormous power and authority the President wields)".

<sup>33</sup> The 1958 Constitution referred to the cabinet in eight articles: 9, 13, 21, 36, 38, 39, 49, and 92.

the Prime Minister (Article 21), means that high-ranking civil servants, as well as heads of public establishments and companies, are appointed by the Cabinet of Ministers. Even though, in principle all points to the ‘Republican Monarch’ having the last say among his Ministers, in practice the work of the Cabinet is influenced to a large extent by the Prime Minister who presides and directs most of its preliminary meetings.<sup>34</sup> This is particularly the case under periods of *cohabitation* during which, as we will see, the Prime Minister plays a leading role in matters pertaining to the Cabinet.

The government which represents the other half of the twin-headed executive set up by the 1958 Constitution is considered to be the second most important body of the French Republic. Comprising of both the Prime Minister and an unlimited number of ministers appointment by the head of state (ministers of state, ministers, associate ministers, secretaries of state, and sometimes high commissioners), it is entrusted with ‘determining and conducting the policy of the Nation’ (Article 20). Among other specific powers, the constitution also allows the Parliament to delegate its legislative power to the government by means of ordinances, under certain conditions. In this institutional framework, the Prime Minister holds regulatory powers and plays a key role in the legislative procedure as he controls part of the parliamentary agenda, and is the only person in the executive branch to have the right to initiate bills. As for the members of the government, in accordance with the principle of the separation of powers, ministerial offices are considered incompatible with various other activities. For example, a government member may not simultaneously be a parliamentarian or hold a job as a public servant. Moreover, in case of the non-fulfilment of their responsibilities, each member of the government is politically liable for the actions of his or her administration. They are also criminally liable for all acts carried out in the exercise of their office.

The legislative power, on the other hand, belongs to the Parliament. In this regard, the current constitution remains faithful to the bicameral system inscribed in the French tradition

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<sup>34</sup> See J.C. Zarka (2009) *Institutions politiques françaises* (Paris: Ellipses).



since the constitution of 1795. The Parliament is thus composed of two chambers: the National Assembly (577 deputies), which is elected by direct universal suffrage and represents the citizens; and the Senate (321 senators) which is elected by indirect universal suffrage and represents the territorial units of the Republic. The constant development of the monitoring activities concerning the executive has further characterised the role of these assemblies, which coexist although much broader powers than the Senate are held by the National Assembly.<sup>35</sup> Despite the temporary decline in the role of the parliamentary institutions, the recent modernisation reforms have enabled them to gradually regain quite an amount of their influence, as we will see in our final segment.

Last but not least, consisting of nine members, the Constitutional Council plays a particular role in the institutional structure of the Fifth Republic. The President of the Republic, the president of the National Assembly and the president of the Senate each appoint three members to the Council for a non-renewable term of nine years. Furthermore, former Presidents of the Republic are *ex officio* life members of the Council. The creation of this Council was meant to guarantee the respect for the new division of powers between the executive and the legislature. Another of its concerns was to prevent parliamentarians from getting round the constitutional provisions that govern them in order to regain the powers that were withdrawn from them by the new constitution. As a result, the Council symbolises a split with the parliamentary tradition that reserved to the assemblies the sovereign power of elaborating the regulations. Despite having played a very limited role during the first years of its creation, this collegial body exercises its jurisdictional authority both in matters

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<sup>35</sup> For e.g., it alone can call the government to account by refusing to grant it its confidence or by passing a censure motion. Following the same logic, only the National Assembly can be dissolved by the President of the Republic). Furthermore, in the case of disagreement with the Senate, the government can decide to grant the National Assembly 'the final say' in the legislative procedure (except for constitutional acts and institutional acts concerning the Senate). Also, the constitution provides the National Assembly with a more important role in the examination of the finance bill and the social security financing bill. However, unlike the National Assembly, the Senate is characterised by its permanence, as it cannot be dissolved.

concerning the monitoring of the constitutionality of the laws prior to their promulgation, as well as in the area of electoral litigation. It is also interesting to note that, traditionally, France has been averse to such judicial review of legislation.<sup>36</sup> For some, these peculiarities indicate a certain continuity with the Jacobin tradition. Yet, today, the evolution of the constitutional jurisprudence testifies to the increasing political role of the judge. This new legislative reality represents a change in paradigm and marks as such an innovation in France's constitutional history and institutional traditions.

### **The Cohabitation: A Unique Variable-Geometry System**

This delicate institutional balance had the potential to crumble whenever the citizens decided to penalise the executive during the election process. In May 1981, following the weakening of the Right and the decline of the French Communist Party (PCF), François Mitterrand became the first political figure from the Left to be elected as President under the Fifth Republic. This represented the first alternation in power by the Left since de Gaulle, and a wave of major reforms meant to transform French society followed, such as the abolition of the death penalty, the legalisation of private radios, and the increase of the minimum wage. Despite these measures, the economic instability continued to grow within the Hexagon and reforms were reduced to a policy of austerity. Combined with the rise of unemployment rates, this caused the defeat of the outgoing majority during the legislative elections of 1986.

As a result, in March 1986, for the first time in the history of the Fifth Republic, the presidential majority and the parliamentary majority were no longer consistent.<sup>37</sup> A unique institutional scenario began where the Socialist President, François Mitterrand and the Centre-right Gaullist leader, Jacques Chirac, were compelled to share power, calling into question the traditional

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<sup>36</sup> See M. Troper, 'Judicial Power and Democracy' (2007) *European Journal of Legal Studies*: p.21.

<sup>37</sup> For further details, see:

<http://www.ladocumentationfrancaise.fr/dossiers/d000132-la-cohabitation-dans-la-vie-politique-francaise/introduction> (accessed 24<sup>th</sup> December 2014).

bipolarisation of the French political life. According to Knapp and Wright,

“[...] there is no concealing the fact that when the parliamentary majority is opposed to the president, a sizeable part of the power within the executive tandem crosses the Seine from the Elysée to Matignon.”<sup>38</sup>

Known as the ‘cohabitation’ or ‘divided government’, this scenario is understood as the coexistence between a head of the state (elected by direct universal suffrage) and an antagonist parliamentary majority.<sup>39</sup> In such a context, an opposition party or coalition of opposition parties controls the legislature. Consequently, the institutional position of the president is weakened and his traditional domination of public approval is inverted, leading thus to a new reading of the constitution. Envisaged by de Gaulle prior to the legislative elections of 1967, the diarchy of the executive power was not without consequences as it systematically caused a temporary weakening of the presidential office in favour of the Prime Minister.

During cohabitation, the president loses certain of his prerogatives. Though he still has the power to appoint his Prime Minister as per Article 8 of the 1958 Constitution,<sup>40</sup> the president must imperatively choose him from within the parliamentary majority. Else, the contrary may result in the vote of a motion of censure against the newly elected government. Moreover, during such period, the president loses all power over the composition of the government team, with the non-negligible exception of naming both the foreign minister and the defence minister due to

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<sup>38</sup> See A. Knapp & V. Wright (Eds.) (2006) *The Government and Politics of France* (New York: Routledge).

<sup>39</sup> M.A. Cohendet, *L'épreuve de la cohabitation* (1991) (Université de Lyon: Ph.D. Dissertation); also see M.A. Cohendet (1993) *La cohabitation, leçons d'une expérience* (Paris: PUF); M.A. Cohendet (2002) *Le Président de la République* (Paris: Dalloz); M.A. Cohendet (2006) *Droit constitutionnel*, (Paris: Montchrestien).

<sup>40</sup> The 1958 Constitution: Article 8: “The President of the Republic shall appoint the Prime Minister. He shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government. On the recommendation of the Prime Minister, he shall appoint the other members of the Government and terminate their appointments.”

his *reserved domain*<sup>41</sup> in these particular areas. Thus, practice has shown that he has, at the very most, a right of veto for certain 'sovereign' portfolios. In the field of home affairs, the influence of the head of state is considerably reduced and it is only in the field of foreign policy, an area in which the constitution expressly recognises his personal powers, that he keeps most of his prerogatives.

However, according to Cohendet, the notion of cohabitation did not call into question the political regime of the Fifth Republic.<sup>42</sup> Though not devoid of disadvantages, the cohabitation took place without causing any serious political crisis. In fact, it revealed its parliamentary nature by supporting a return to the written constitutional norm.

The situation, which is a peculiar French arrangement with no equivalent elsewhere, has occurred thrice. Hence, a situation which once was thought to be exceptional became common due to the non-coinciding electoral terms (parliamentary and presidential). The first two cohabitations (1986, 1993<sup>43</sup>) occurred at regularly scheduled legislative elections. The third, which took place in 1997, was the unexpected result of President Chirac's decision to dissolve the National Assembly prematurely.<sup>44</sup> In order to comply with the will of the people and avoid an eventual institutional blockade, both President Mitterrand and President Chirac played the game of cohabitation by naming a Prime Minister who was from an opposition party.

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<sup>41</sup> Both Article 14 and 15 of 1958 Constitution refer to the so-called presidential 'reserved domain': prerogatives in which the president has a determining power.

<sup>42</sup> M.A. Cohendet (2005) *The French Cohabitation: A Useful Experiment* (Academi Sinica: Research Centre for Humanities & Social Sciences).

<sup>43</sup> Known as the 'velvet cohabitation', this second cohabitation was much more consensual than the first one. During this period, there were no real issues between President Mitterrand and Prime Minister Balladur.

<sup>44</sup> June 1997 marked the beginning of the longest and most unexpected cohabitation. The Left having won the legislative elections, President Chirac was compelled to name Lionel Jospin, his opponent in the presidential elections of 1995, as Prime Minister. Jospin's government gathered for the first time a 'Plural Left', a coalition comprising of the Socialist Party, the Greens, and the French Communist Party.

Yet for some, this situation remained an anomaly of the Fifth Republic that made it difficult to conduct a proper policy. Moreover, it presented a risk of weakening France on the international platform in case of a disagreement between the two heads of the executive. To avoid the recurrence of such a detrimental situation, the *quinquennat* was introduced, with some reticence, by President Chirac following the constitutional referendum of October 2000, which gathered 73.21 per cent of votes. This referendum sought to reduce the risks of cohabitation by bringing down the presidential term to five years instead of the seven years as it used to be under the constitutions of 1875, 1946, and 1958.<sup>45</sup> Following this referendum, the legislature also adopted the organic law of May 2001, amending the expiration date of the powers of the National Assembly, so that the legislative election of 2002 took place in June, following the presidential elections that were held at the end of April the same year. Both these reforms limited the risk of cohabitation by providing a nearly simultaneous renewal of the presidential term and the parliamentary majority.

This revision to the electoral timetable was justified by the need to avoid the presidential elections becoming secondary to the legislative elections of which the main function remains the designation of a majority that reflects the views of the head of state. Since 2000, both the presidential elections and the legislative elections are now taking place within a few weeks. This constitutional reform however does not exclude the possibility of cohabitation (e.g., in case of resignation or death of the President, or in case of dissolution of the National Assembly).<sup>46</sup> Nevertheless, up to now, this reform decidedly strengthened the role of the President who now benefits from a majority at the National Assembly throughout the duration of his mandate, which consequently weakens the role of the Prime Minister.

Today, the constitutional doctrine divides itself between those who see it as a return to the letter of the constitution and those

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<sup>45</sup> See: [http://www.larousse.fr/encyclopedie/divers/V\\_e\\_R%C3%A9publique/140715](http://www.larousse.fr/encyclopedie/divers/V_e_R%C3%A9publique/140715) (24<sup>th</sup> December 2014).

<sup>46</sup> See <http://www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/quinquennat.html> (24<sup>th</sup> December 2014).

who consider that it paradoxically reinforces presidentialism. But in practice, cohabitation gave rise to a *renaissance* of the parliamentary culture by placing the support of the assemblies at the centre of the political game.<sup>47</sup> For Cohendet, cohabitation revealed the parliamentary nature of the Fifth Republic by supporting a return to the written constitutional norm. Overall, cohabitation reminds us of the hybrid nature of the Fifth Republic which is, as earlier mentioned, neither completely presidential, nor completely parliamentary. Moreover, it is the only time during which the head of state cannot freely exercise his role of a ‘Republican Monarch.’

### **The French President, a Republican Monarch**

The French Republic, and mostly the Fifth Republic, is marked by monarchical traditions that are best illustrated by Maurice Duverger in his (provocative) expression: ‘*monarque républicain*’<sup>48</sup> (or republican monarch).<sup>49</sup> As Duverger put it, “the French republican monarch might be seen as a Protean King, changing shape and power according to the nature of parliamentary forces.”<sup>50</sup> This expression of the nature of the institution, which has been widely quoted over the years, characterised the new powers of the head of state set up by de Gaulle at the beginning of the Fifth Republic. The stature of the President and the political authority of de Gaulle reduced the role of the Prime Minister, leading Duverger to openly question the French diarchy with his famous remark on de Gaulle’s then Prime Minister, Michel Debré: “*M. Debré existe-t-il?*” (‘Mr Debré, does he exist?’).<sup>51</sup> This republican monarchy is thus founded on the triptych of a President who embodies the nation and conducts its politics, a Prime Minister who implements the presidential preferences through his government, and a party or majoritarian coalition that adopts through the Parliament, the laws and budgets

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<sup>47</sup> See Ségur (2014).

<sup>48</sup> See M. Duverger (1974) *La Monarchie Républicaine* (Paris: Robert Laffont).

<sup>49</sup> This was echoed by French Journalist, Alain Duhamel, who in 1980 wrote that ‘France is governed by an elected sovereign, a republican monarch, almost an enlightened despot’.

<sup>50</sup> Duverger (1974): p.188.

<sup>51</sup> M. Duverger, ‘*M. Debré existe-t-il?*’ (1959) *La nef* 30: pp.3-8.

requested by the President.<sup>52</sup> It does not contemplate any restraint of the President.

By suggesting a new balance of powers to define the Fifth Republic and establishing the head of state as the 'keystone' of all institutions,<sup>53</sup> General de Gaulle announced in September 1958 the end of a well-rooted French tradition that a strong executive power is incompatible with the notion of the Republic. De Gaulle's governing methods, which his opponents referred to as 'personal powers', were well consistent with the image of the republican monarch. In fact, from a 'Rousseauist' perspective, de Gaulle himself considered his regime to be a 'popular monarchy'. Although in his case, such a characterisation seemed conceivable due to his historical role and 'Bonapartist' prestige, it also instigated many concerns as to whether or not this image would be sustained following his mandate. Against all odds, this republican monarchy did not only survive its founder, but it also consolidated itself over the years by seeing its scope further extended.<sup>54</sup> The sustainability of such a situation was only made possible due to the anticipative measures of the founder and leader of Free France. De Gaulle knew that his own legitimacy came from his historic popularity. He believed that, without this legitimacy, it was very improbable that his predecessors will possess the required level of authority to govern the country. The risk was that, once he left, the Fifth Republic would be no more. It is to avoid such a potentiality that he decided to further institutionalise the system.

The occasion presented itself in March 1962 with the end of the war in Algeria. France was in pain and reconciliation was

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<sup>52</sup> S. Berstein & M. Winock (Eds.) (2008) *La République recommence* (Paris: Seuil).

<sup>53</sup> The 1958 Constitution places the President of the Republic in the highest position and makes him, in the words of Michel Debré, the 'keystone' of the system. Indeed, Article 5 of the constitution provides that "the President of the Republic shall see that the Constitution is observed. By his arbitration, he ensures the proper functioning of the public authorities and continuity of the State. He is the guarantor of national independence, territorial integrity and observance of treaties."

<sup>54</sup> See S. Berstein, 'Une monarchie républicaine?' in J. Gaarrigues, S. Guillaume & J.F. Sirinelli (Eds.) (2010) *Comprendre la Ve République* (Paris: PUF).

unfortunately not immediate. Though the war was over, the *Organisation de l'Armée Secrète* (O.A.S., or 'Secret Armed Organisation') continued to perpetrate attacks in France and even led several assassination attempts on the General. The best known was the attempt of the *Petit Clamart*, planned by Colonel Bastien-Thiry. De Gaulle used the popular emotion stirred up by this failed attempt to announce, three weeks later, a referendum on the election of the President of the Republic at the direct universal suffrage. Through this constitutional reform, de Gaulle intended to guarantee a new source of legitimacy for himself and his successors. The referendum took place in October 1962 and was approved by 62.5 per cent of the votes. The first presidential elections under the direct universal suffrage took place three years later in 1965. Since then, the President's strength has come from the fact that he is elected by direct universal suffrage,<sup>55</sup> which gave him a much stronger legitimacy when conducting the politics of the nation. From then on, the President became the authority that retains a capacity of command that is made undeniable due to his popular legitimacy. In a way, the Gaullist project of 1962 marks the coronation of this monarchical practice.<sup>56</sup>

Today, the President of the French Republic occupies a preeminent position which is in particular reflected by the priority of appearance attributed to him in the constitution. This was not the case in 1946 and it is therefore of symbolic importance. In the constitution of the Fourth Republic, the president only appeared in Title IV, whereas the Parliament appeared in Title II. In the current constitution, the head of state appears in Title II. As historian Samuel Berstein wrote, the very organisation of the 1958 Constitution's text reversed the existing hierarchy of powers.<sup>57</sup>

However, the presidential powers guaranteed by the constitution do not differ textually from the Third and Fourth Republics. The

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<sup>55</sup> According to Article 7 of the constitution, "The President of the Republic shall be elected by an absolute majority of votes cast. If such a majority is not obtained on the first ballot, a second ballot shall take place on the fourteenth day thereafter."

<sup>56</sup> In order to further affirm this supremacy of the head of state, de Gaulle requested his then Prime Minister, Michel Debré, to resign in favour of Georges Pompidou.

<sup>57</sup> Berstein (2010): p.113.



president still ensures compliance with the constitution as per Article 5. The Copernican revolution of the 1958 Constitution resides elsewhere. The constitution provides the President with three significant tools meant to further assert his authority: the right to submit to referendum any Government Bill which deals with, or affects, the organisation of the public authorities (Article 11), the right to dissolve the National Assembly (Article 12), and the ability to exercise 'exceptional powers' (within the limitations of Article 16). According to Berstein, this presidential pre-eminence goes however beyond the constitution. The propensity to preserve and even stress the monarchical characterisation of the institutions of the Fifth Republic was sustained not only by Gaullist President, Georges Pompidou. Both President Giscard d'Estaing and President Mitterrand, who often criticised the way de Gaulle used his powers, used the logic of the republican monarchy in a similar manner, leading them, at times, to put aside the republican tradition. The periods of cohabitation were the only periods which put this notion into question as the President of the Republic was then required to share powers with his Prime Minister who was supported by the parliamentary majority. For some, the *quinquennat* however restored the republican monarchy; but only to a certain extent as the President is now in some ways devalued and only seen as the chief of a majority. Overall, this illustrates how the presidential elections remain the major political action provided by the institutions of the Fifth Republic.

### **The Major Amendments to the Constitution of the Fifth Republic**

According to Martin Rogoff,<sup>58</sup> the constitutional evolution of France has proved remarkable in its ability to adapt. Whereas constitutional reforms were almost non-existent in the previous republics, the Fifth Republic testifies of a certain trivialisation of its procedure. Since its inception, the constitution of 1958 went through 24 amendments, 19 of which were adopted in the early

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<sup>58</sup> See: <http://www.juspoliticum.com/Fifty-years-of-constitutional,391.html> ((24<sup>th</sup> December 2014).

90s.<sup>59</sup> Some of these reforms profoundly modified the constitutional text and had major repercussions on the institutional and political practice of the Fifth Republic. Others, which were more of a 'technical' nature, either to give effect to requirements arising from European Community law,<sup>60</sup> or adapted the constitution to the evolution of democratic practices and environmental protection.<sup>61</sup> While for Rogoff, these reforms were a necessary element of regime flexibility, for French constitutionalist, Bertrand Mathieu, the recent profusion of constitutional reforms poses a major risk of inconsistency and devaluation of the constitution.<sup>62</sup> His argument is further stressed by Philippe Ségur who believes that, although it is necessary to adapt the Fundamental Law to societal evolution, a constitution must preserve the rigidity that is consubstantial to it in a system of written law in order to deserve its status.<sup>63</sup>

The constitution of 1958 initially provided two procedures of reform. Former Article 85, which was only used once in June 1960, required the agreement of both the French Parliament and the Senate of the Community. Article 89 lays down the current

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<sup>59</sup> It is also interesting to note that several projects of constitutional reform have failed over the years due to a lack of agreement between the three authorities (Executive, National Assembly, Senate), each having, at one time or another, the power to stop a procedure of revision. These projects included the introduction of the *quinquennat* in 1973, the enlargement of the referendum in 1984, the creation of a referral to the Constitutional Council by way of exception (1990 and 1993), a reform of the *Conseil Supérieur de la Magistrature* (2000), as well as the evolution of New Caledonia and French Polynesia (2000).

<sup>60</sup> European integration was the base for four constitutional amendments. The first two reforms date back to June 1992 and June 1999. They were made to allow the ratification of the Maastricht Treaty and the Amsterdam Treaty, respectively. The last two were to allow the ratification of the Treaty establishing a Constitution for Europe, which was ultimately rejected by France, and the ratification of the Treaty of Lisbon in December 1997.

<sup>61</sup> For instance, one may refer to the constitutional reform of July 1999 on parity of access to electoral mandates and elective functions. Another major reform was the constitutional law of March 2005, which raises the rules contained in the Charter for the Environment of 2004 to a constitutional rank.

<sup>62</sup> See B. Mathieu, '*Les révisions constitutionnelles sous la V<sup>e</sup> République. Les objectifs des auteurs, le jeu des acteurs*' in E. Brouillet & L. Massicotte (Eds.) (2011) *Comment changer une constitution* (Laval: PUL).

<sup>63</sup> Ségur (2014): p.46.

amending mechanism.<sup>64</sup> According to the said article, bills pertaining to constitutional reforms, whether they are government bills submitted by the President of the Republic upon a proposal of the Prime Minister, or bills originating in Parliament, must first be passed by the two assemblies on separate occasions but in identical terms. The usual prerogative of the National Assembly to have the final say in the case of a disagreement with the Senate does not apply to constitutional bills, which may, by decision of the President of the Republic, either be submitted to the two assemblies meeting together in Congress at Versailles (the bill is passed if accepted by three fifths of the votes cast), or put to a referendum if it was originally government-sponsored.<sup>65</sup> So far, the constitution has been modified on 22 occasions following this procedure (21 passed by the Congress and only 1 by referendum).

A third procedure was however used with much controversy in the early 1960s. According to Article 11, the President of the Republic is able to submit a bill, in certain limited cases, through the recourse to a referendum. Using an extensive interpretation of this procedure, de Gaulle introduced, in October 1962, the election of the President of the Republic by direct universal suffrage. This historic referendum was approved massively by the people, despite the *Cartel des non*, which failed to mobilise an effective opposition. Furthermore, it marked a major clash between the new and the old republics, which led to the bipolarisation of French political life, and ultimately to a growing presidentialisation of the Fifth Republic, as envisaged by the General in Bayeux. Both Article 6 and 7 of the constitution were subsequently modified. Many of the French constitutionalists considered the use of Article 11 to be a major procedural shift, which gave rise to several disagreements in regard to its legality. This contested practice has however not been used since the failure of the referendum of April 1969 concerning the regionalisation and the reform of the Senate, after which President de Gaulle resigned. Hence, despite Mitterrand's

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<sup>64</sup> The full article is available in the text of the French constitution, which is available in English in the International Constitutional Law website <<http://www.servat.unibe.ch/law/icl/fr00000.html>> (accessed 25<sup>th</sup> December 2014).

<sup>65</sup> <[http://www.assemblee-nationale.fr/english/synthetic\\_files/synthetic.pdf](http://www.assemblee-nationale.fr/english/synthetic_files/synthetic.pdf)> (accessed 24<sup>th</sup> December 2014).

subsequent statement which sought to legitimise the use of Article 11 as a means to amend the constitution in conjunction with Article 89,<sup>66</sup> the latter remains the normal amendment procedure.

Profusely used in the last two decades, Article 89 enabled the implementation of major reforms which, as previously stated, had tremendous repercussions on the institutional and political practices of the Fifth Republic. For instance, the reform of October 2000, which finally introduced the presidential *quinquennat*, was debated for over 27 years following Pompidou's unsuccessful initiative in 1973. A single parliamentary session was also introduced in 1995.

Yet, the constitutional bill of 23<sup>rd</sup> July 2008 is perhaps the most substantial of all. Although it was adopted by an extremely narrow margin, the reform of 2008 affected all branches of government and was therefore known to be "the most important revision to which the Fundamental Law has been submitted."<sup>67</sup> Hence, known to be a large-scale reform, it aimed to restore balance to the functioning of the institutions in favour of the Parliament and strengthen the protection of the rights of citizens. Over the 89 articles of the constitution of 1958 – nearly half – were amended following its adoption. This constitutional reform was introduced by newly elected President Sarkozy, who, inspired by the attempted reforms of 1990, established a commission of thirteen members, chaired by former Prime Minister Edouard Balladur, to make proposals for the modernisation and restructuring of the institutions of the Fifth Republic.<sup>68</sup> The Balladur Report discussed three major points: a better controlled executive power, a strengthened Parliament, and new rights for citizens.<sup>69</sup> The introduction of a new form of *a posteriori* constitutional review of legislation (*contrôle de constitutionnalité*) was also among the most significant provisions of the reform of 2008. Among its other measures were the reduction of the presidential term limit to two consecutive terms, the ability for elected

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<sup>66</sup> See interview of F. Mitterrand (1988) *Pouvoirs* 45: p.137.

<sup>67</sup> P. Roger, 'La dernière mue?' *Le Monde*, 21<sup>st</sup> May 2008.

<sup>68</sup> Introduced by decree No. 2007-1108 of 18<sup>th</sup> July 2007.

<sup>69</sup> See *Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la Ve République* (2008) présidé par Édouard Balladur, *Une Ve République plus démocratique*.

ministers to automatically recover their seat before entering the government, and the introduction of a referendum by popular or parliamentary initiative. The reform of 2008 was implemented gradually and generated a new balance of powers that strengthened the prerogatives of the Parliament. According to Rogoff;

“Constitutional developments in France since 1958 provide an excellent example of the progressive entrenchment of constitutionalism in a nation that had long been hostile to the ‘government of judges’ by a combination of political and judicial techniques that assure continuity and legitimacy to fundamental changes in political and legal structures and values.”<sup>70</sup>

### **Conclusion**

From an institutional perspective, the creation of the French Fifth Republic, known as ‘de Gaulle’s Republic’, was of great novelty. Its study provides a test bed of theories combining both the political art and the constitutional art. Even though similar systems based on semi-presidential government existed in the past, France remains today a major reference in comparative politics. More importantly, the Fifth Republic has proven to be one of the most stable political systems so far experienced in France, especially due to the stability of the executive, which enabled it to overcome various internal and external crises without the continuity of the state being undermined. Hence, the fate of the Fifth Republic does not seem to be sealed in its constitution. Instead it mostly seems to depend on France’s socio-political context and the will of its leaders. As de Gaulle himself said, “For glory gives herself only to those who have always dreamed of her.”

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<sup>70</sup> M.A. Rogoff, ‘Fifty Years of Constitutional Evolution in France: the 2008 Amendments and Beyond’ (2011) *Jus Politicum* 6: p.2.