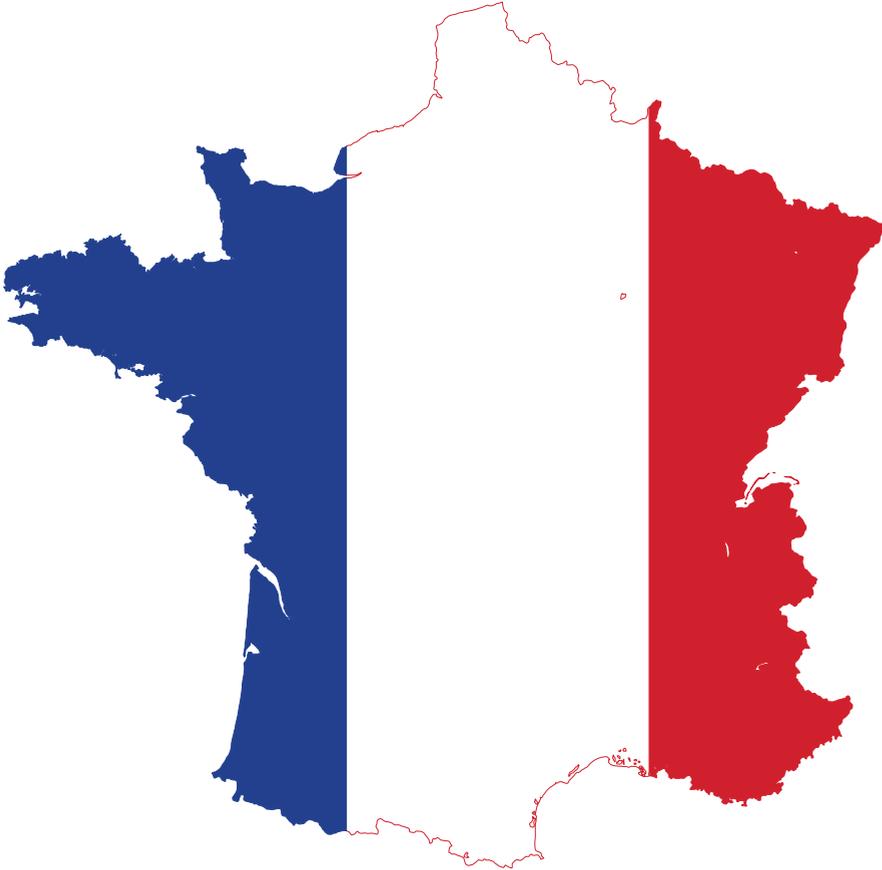




# The Fifth Republic - France's long constitutional walk

By Catherine Shakdam



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## **About**

Al-Bayan Center for Planning and Studies is an independent, nonprofit think tank based in Baghdad, Iraq. Its primary mission is to offer an authentic perspective on public and foreign policy issues related to Iraq and the region.

Al-Bayan Center pursues its vision by conducting independent analysis, as well as proposing workable solutions for complex issues that concern policymakers and academics.

## **The Fifth Republic - France's long constitutional walk**

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If France today can proudly claim to a rich democratic heritage, its walk towards such institutional freedom was not an easy one. Like most of its western counterparts, France's history - and for the purpose of this research paper, France's constitutional history started under monarchical absolutism.

What is most pertinent to France's democratic evolution is I believe France's willingness to adhere to continuity in its political thought as opposed to selective amnesia. If France has suffered through many dark political and institutional spells - trading one republic for a monarchy or parliamentary independence for the military rule of an empire, France built upon its experiences to find its unique voice, and assert its tone. Born as much in its mistakes than it was born into its successes, France has maintained throughout its growing pains several constants - or maybe singularities, depending how one chooses to look at it.

The Fifth Republic was adopted on 4 October 1958, the product of France's constitutional thought and its socio-political history. Characterised most predominantly by its need to anchor the essence of the nation-state in the principle of separation in between Church and State (the religious and the political), France's real character lies in the conceptualisation of power, and its affirmation of power beyond the temporality of politics. Such conceptualisation, interestingly enough, was first enounced by the Crown.

France's first Constitution may have been written in the fires of 1789 Revolution by the heirs of the Renaissance, but its legal foundations remained rooted in the Salic Law and the Statutory Theory. If the French were willing to do away with the monarchy, they nevertheless see enough of their own political reflection in those principles and laws which defined the source of political power. As it were, France's democratic walk required a series of transitional periods, each the result of socio-political experiments, each the expression of a popular will and formulation of a political thought which across the centuries, would ultimately gave birth to the Fifth Republic.

If a lesson had to be drawn from the French model ... or rather, study, it is

that Democracy takes time. Not only does it take time to formulate but also to materialise into institutional realities. More importantly still, and this is possibly the biggest lesson yet, it is that a nation cannot and should not exist outside its own history and political heritage.

For a nation to exist in such an institutional vacuum, cut off from its past, its beliefs, its patrimoine is to condemn itself to democratic failure. Democracies do not have to be perfect as long as they are owned by the people they serve, and serve to represent.

France here serves an interesting example.

Whereas France is and remains the “world champion” of parliamentary instability, its institutional history began before the French Revolution of 1789, on the premise that Power ought to exist outside and beyond the reach of men - absolute and divine in its authority.

Although today, France's secularism requires that God be driven out of the public sphere, without any hope for redemption, the Constitution has nevertheless been endowed of a somewhat divine quality in the expression of its authority.

The Constitution is the higher rule upon which all other rules derive from.

The Salic law

The Salic law provisioned for the exclusion of women in matters of governance, and imposed the male hereditary right. This is what is called representation to infinity: the inheritance empowers a King who himself will be replaced by a legitimate heir. Thus, the French monarchy has no real known dynastic feud.

It remained the basis of Frankish law throughout the early Medieval period and influenced future European legal systems. Salic law had a formative influence on the tradition of statute law that has extended to modern times in Western and Central Europe, especially in the German states, the Netherlands, parts of Italy, Austria-Hungary, Romania, and the Balkans.

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## The Statutory Theory

This theory has four different principles:

- The king did not die in France. No dissolution is therefore possible. The successor is pre-designated which prevents any latency. “The king is dead. Long live the king!”

- The King of France is always of legal age, in that he is his the throne and the throne is in of itself an institution. There can never be regency, or at least not under the inference that the king is not in the position to make decisions. Instead all decisions are made in his name, even in the case of a tutelage. This allowed for the ‘Rule’ to exist outside the limitations of the monarchy or monarchs. The King is already king, all actions of the state are made in its name.

- The crown of France is never owned by the sovereign - rather it owns the monarchy and sits its guardian. The king does not have the crown, he is the property of the Crown. It was designated by the Salic law, which imposed a duty.

- The King is not bound by the obligations of its predecessors.

A final principle was added in 1588 at a special council in Blois: the principle of catholicity. Under such law, the Monarchy, and to a greater extent France as an emerging nation-state came under the spiritual fold of the Vatican and therefore the Pope. France’s long struggle with religion began in the formulation of such governing pre-requisite.

This marked the beginning of France pre-constitutional history. From that point on, every French monarchs worked to increase his power over the kingdom, thus turning hereditary to absolutist. And while such absolutism was somewhat tempered by some degree of popular representation in the form of the ‘etats generaux’ - popular committees, such system really only served to reinforce the power of the Crown by offering popular legitimacy to any given ruling monarch.

As France’s kings became more powerful and assertive in their powers, such committees became redundant, only to reappear on the eve of 1789 Revolution.

It is France’s experience with Absolutism and its allegiance to the Catholic Church that inspired much of Montesquieu’s political philosophy, and ultimately helped shape the principles regulating our modern democracies: the separation of power and secularism.

The term “trias politica” or “separation of powers” was coined by Charles-Louis de Secondat, baron de La Brède et de Montesquieu, an 18th century French social and political philosopher. His publication, *Spirit of the Laws*, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under Montesquieu's model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently.

Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

Montesquieu writes: “All power is condemned to go to the end of itself.”

If the US Constitution and British institutions (House of Commons) were based then on the principle of separation, the French monarchy was, at the time, absolutely not.

A turbulent century, the 18th century was one of questioning and political reassessing of the origins of power, the source of its legitimacy and the limitations its expressions ought to be put under for men to be truly free.

But Montesquieu did not invent the doctrine of the separation of powers. Much of what he had to say in Book XI, Chapter 6 of the *De l'Esprit des Loix* was taken over from contemporary English writers, and from John Locke. Montesquieu, it is true however, contributed new ideas to the doctrine; he emphasized certain elements in it that had not previously received such attention, particularly in relation to the judiciary, and he accorded the doctrine a more important position than did most previous writers. The influence of Montesquieu cannot be ascribed to his originality in this respect, but rather to the manner and timing of the doctrine's development in his hands.

Montesquieu, in his Preface, made it clear what the work contained: “I have laid down the first principles, and have found that the particular cases follow naturally from them; that the histories of all nations are only consequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent.” These principles are not drawn from the writer's prejudices, but “from the nature of things.”

Montesquieu showed the way in which the laws of each State are related to the nature and principles of its form of government, to the climate, soil, and economy of the country, and to its manners and customs.

Such a scientific approach rules out the expression of personal likes and dislikes: “Every nation will here find the reasons on which its maxims are founded.” No absolute solutions are proposed, only the necessary relationships between the form of government and the laws are exposed. This claim to scientific detachment gives to Montesquieu’s work a status that no political pamphleteer could claim. The doctrine of the separation of powers is embedded in this examination of cause and effect in the political system - it is no longer an isolated doctrine, taken up when political advantage makes it expedient, and put off when no longer needed; it is part of the relationships of a particular type of legal system; and furthermore, it is a necessary characteristic of that system which has political liberty as its direct aim.

For all intents and purposes Montesquieu’s work has been a canvas for modern democracies in that he offered a system in which nations could keep to the theory, and still define their own institutional individualism.

*De l’Esprit des Loix* was hailed as the first systematic treatise on politics since Aristotle.

Although a son of the 18th century, Montesquieu’s work and thought remain refreshingly relevant. Maybe his assessment of men’s inherent nature is in fact universal and therefore absolutely true regardless of time.

Often labelled a pessimist, Montesquieu asserted men’s nature to lean towards evil if not kept in check, hence his call for regulations and limitation of political power.

He writes: “Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.” Indeed how many well-thinking democracies have seen their axis veered towards totalitarianism for a lack of foresight, and oversight?

Montesquieu, like the Greeks, believed that the nature of the State’s constitution is of the greatest consequence. Thus Montesquieu commenced his work with a description of the three different types of government, their nature and their principles, for if he could establish these, then the laws would “flow thence as

from their source” - or so his logic held.

The philosopher defined three types of government: republican, monarchical, and despotic.

In a republican system, which in latin translate to public affair, or commonwealth the people are the source of all legitimacy -they hold supreme power.

In a monarchy a single person governs by fixed and established laws. Back in the 18th century, the legitimacy of such power was rationalised through religion through the assumption that the monarch's rule was bestowed upon him by God.

In a despotic government a single person directs everything by his own will and caprice.

Republican government can be subdivided into aristocracy and democracy, the former being a State in which the supreme power is in the hands of a part of the people, not, as in a democracy, in the body of the people. In a despotic government there can be no check to the power of the prince, no limitations to safeguard the individual—the idea of the separation of powers in any form is foreign to despotic governments. In an aristocracy also, though it be a moderate government, the legislative and executive authority are in the same hands.

However, in a democracy, Montesquieu argued, the corruption of the government sets in when the people attempt to govern directly and try “to debate for the senate, to execute for the magistrate, and to decide for the judges.”

If Montesquieu has often been credited for his extensive research on democracy, the philosopher did not believe that democracy could work effectively when applied on a mass scale. He believed in democracy such as that exercised in Ancient Greece, where small societies could organise their institutions and entrust their governance to their chosen representatives.

Montesquieu was by no mean an advocate for democracy, rather an observer of its mechanisms. That being said his work has become the basis of our modern political thoughts.

His view of the functions of government was much closer to modern usage than his predecessors’—he was one of the first writers to use “executive” in a recognizably modern sense in juxtaposition with the legislative and judicial functions. His emphasis upon the judicial function and upon the equality of this

function with the other functions of government, though by no means altogether new, was nevertheless of great importance.

He paved the way for the doctrine of the separation of powers to emerge again as an autonomous theory of government. This theory was to develop in very different ways in Britain, in America, and on the continent of Europe, but from this time on, the doctrine of the separation of powers was no longer an English theory; it had become a universal criterion of a constitutional government.

If Democracy has often been sold as the point of Montesquieu's work that would be to miss the intent before his observations. A product of his environment and his own social status - Montesquieu was from the nobility after all .... he was more interested in socio-political justice through an institutional equalitarian system than the promotion of any one particular system of governance.

France's constitutional journey is to that regard very similar. France's crusade has always been for liberation and empowerment, less so the institutional form in which it would be achieved through. Some of France's greatest socio-political achievements actually took place under systems of governance many 'democrats' would label as institutional aberration.

France for example saw its legal system transformed under Napoleon Bonaparte. In many ways the Empire did more for France's socio-political and institutional development than the revolutionary guillotine.

## FRANCE'S TODAY

France's current republic, the Fifth Republic, was established with the adoption of a new constitution on October 4, 1958, with direct presidential elections introduced in 1962. The Constitution of the Fifth Republic strengthened President Charle de Gaulle's powers as head of state at the expense of parliament and the judiciary.

The Constitution of the Fifth Republic draws inspiration from the first French Constitution, and incorporates the Declaration of the Rights of Man and the Citizen by a reference in its preamble.

### Te Executive

France has a semi-presidential system. The President is elected by universal suffrage for a five year term, and may serve no more than two consecutive

terms (down since 2002 from the previous no-limits seven year term) using a two-round majority system: if no candidate receives an absolute majority of the vote, a second round takes place between the top two vote-getters from the first round. To take part in the election, candidates must obtain 500 sponsoring signatures of elected officials from at least 30 departments or overseas territories.

The President is head of state and supreme commander of the military, and chairs the cabinet.

### The Council of Ministers

The President appoints the Prime Minister, who nominates the other ministers for appointment by the President. The Prime Minister and cabinet can only be removed by the National Assembly, to which they are collectively responsible. As the National Assembly has tended to have a majority belonging to the President's party or coalition, the President and the Prime Minister have tended to come from the same political party. Sometimes, however, the National Assembly has been controlled by the party opposing the president, leading to a divided executive where the President and Prime Ministers came from different parties. This is called cohabitation. There have been three periods of cohabitation, lasting a total of nine years. While the President retains an independent power in determining foreign policy, all domestic decisions made by the President must be approved by the Prime Minister. Cabinet ministers determine policy and put new legislation before parliament. In practice, the President exerts a great deal of influence over a cabinet of the same political colour, including the effective power to dismiss a cabinet, but much less in cases of cohabitation. The President has the power to dissolve the National Assembly and call new elections, but no more than once per year. He has no veto over legislation, although he may return a bill to parliament for reconsideration; if passed again, the bill must be promulgated as law. The President may be removed by Parliament sitting as the High Court (impeachment) for "a breach of his duties patently incompatible with his continuing in office". This process is initiated by one house, with the other house issuing a ruling by secret ballot, in which a two-thirds majority is necessary for a removal. On the request of the Prime Minister or both houses of parliament, the President may call a binding referendum on many issues. In practice, presidents have been able to call referenda without such request, as the Constitutional Council held the results to be valid under the principle of popular sovereignty.

## The Legislature

The French parliament is bicameral, consisting of the Senate and the National Assembly. The National Assembly is elected by universal suffrage for a five-year term. It currently consists of 577 Deputies elected (according to the electoral law) from single-seat districts by two-round plurality: if no candidate received a majority of the votes in the first round, any candidate which received votes equivalent to at least 12.5% of registered votes may take part in the second round, in which the candidate with most votes wins. A candidate for an election must be a citizen, have attained the age of 18 years, be qualified to vote, not be ineligible by dint of a criminal conviction or judicial decision, and have a bank account.

The Senate is elected indirectly by electoral colleges for each department (district), consisting of a total of more than a hundred thousand councilors from the different levels of local government. The electoral system is proportional in departments with three seats or more, but majoritarian in departments with one or two seats. The departments are divided into two classes, so that half of all Senators are elected each three years, for a term of six years. Originally, Senators served nine-year terms but this was reduced to six in 2004.

The National Assembly is far more powerful than the Senate. When there is disagreement between the two houses, the government calls a conference committee of representatives from both houses. If one of the houses rejects the committee's compromise proposal, or a compromise cannot be reached, the government can ask the National Assembly to make the final decision. The government is quite dominant over parliament, having other considerable powers over the legislative procedure, including when debate ends on a government bill and which amendments are debated. It can also make a finance or social security financing bill into a confidence vote, which is considered to have passed the National Assembly unless the government is voted out by a non-confidence vote. Furthermore, if parliament does not reach a decision on a finance bill or a social security financing bill within 70 or 50 days, respectively, the government is empowered to pass such legislation by decree. The autonomy of parliament is also restricted, as each house is not allowed to form more than eight committees.

### The Judiciary

There are multiple final courts in France, each with its own jurisdiction. The Court of Cassation hears appeals on criminal and civil cases; the Council of State hears administrative appeals; a jurisdictional court decides in case of

conflict between the civil and administrative systems of justice. The Court of Cassation and Council of State each consist of more than a hundred judges, who hear different kinds of cases in small panels. The Council of State also has an advisory role, reviewing government bills before they are submitted to parliament as well as decrees and delegated legislation. Judges are appointed to the Court of Cassation by the Conseil Supérieur de la Magistrature (Supreme Council of the Judiciary), which is also in charge of disciplining judges. The Supreme Council consists of the President of the Republic (presiding), the Minister of Justice (as vice-president), four judges and four legal department lawyers (one in each group appointed by the President of the Republic, the President of each House of Parliament, and one elected by the assembly of the Council of State), and six judges and six legal department lawyers elected by their colleagues to represent each of their ranks; the president and vice-president are ex-officio, the others serve for a renewable four-year term. The Council of States consists of various members: most are appointed based on competitive examinations, some are appointed by the President of the Republic, and others appointed by the government. Cases of misconduct by ministers are heard in the Court of Justice of the Republic, which consists of six parliamentarians elected from each house and three judges of the Court of Cassation.

The Constitutional Council handles constitutional issues. It consists of nine regular members who are appointed by the President, the President of the Senate, or the President of the National Assembly every three years for a nine-year, non-renewable term. In addition, former Presidents of the Republic are also members of the Constitutional Council, by right (currently there are three such members). The Council must confirm ex ante the constitutionality of all organic laws before promulgation, as well as regular laws challenged by the President, the Prime Minister, a president of one of the houses, 60 Senators, or 60 Deputies. Constitutional amendments in 2008 extended the powers of the Council to review the constitutionality of laws after their promulgation when a case concerning fundamental rights arises in the context of court cases.

### Constitutional amendment procedure

A constitutional amendment can be proposed by the President on advice of the Prime Minister or by members of parliament. It must be passed by both houses of parliament sitting separately and ratified by referendum. If the amendment

is a government proposal, it may be ratified by a three-fifths majority of a joint session of parliament.

### FRANCE'S JOURNEY TO THE FIFTH REPUBLIC

1789 marked a profound change in direction in France. However, and this point is worth underscoring, the Revolution had no political ambitions of its own - its sole dynamic was to depose injustice and return power to the hands of the people so their fate would no longer be owned to the whim of absolutism. Monarchy, as such was not the elected enemy. Of course events ultimately led to a complete rewrite of France's system of governance, but such a rewrite was an unintentional development of the Revolution.

From the moment France rose a Revolution in 1789, the country will spend an entire decade trying out systems of governance and variants to monarchism without any real form of stability - institutional or otherwise. It would take the Consulate in 1799 under the authority of Napoleon Bonaparte for France to return to some degree of socio-political stability.

If France may have been intellectually ready for democracy, its political thought and its institutions were not yet able to transition from theory to practice.

After the unknown and chaos of the Revolution, France welcomed the guidance of a strong hand.

1789-1875

In 1789, Abbé Sieyès published a small book. He begins his preface as follows:

“What is the third state ? All. What is it up to now? Nothing. What does it aspires to become? Something.”

Sieyès essentially drew in his work the first sketch of a constitution, thus asserting the need for a new form of supra-authority - this time not in the person of a king appointed by God, but a legal system legitimise by the people.

Abbé Sieyès' ideas immediately found an echo within a soon-to-be revolutionary France - especially within the nobility and the clergy. If the people brought the monarchy to the guillotine, it was the nobility and the clergy who first thought the Revolution into motion.

While their fate under absolutism was undoubtedly fairer than that of the

people, France's privileged elite was more interested in the good of the nation, than holding on to an archaic institutional model they understood would ultimately be the death of all.

More pertinently, the elite wanted to assert its position in France's next institutional chapter, by offering some degree of continuity. No Revolution has ever completely done away with the past. For any change to be successful, one needs to agree that renovation is more often than not more effective than a complete do-over.

Before the Bastille fell, France was paving the way for a smoother change. History of course had other plans. Change in France would be more dramatic than that imagined at the Jeu de Paume. France's revolution was meant to exist in the ratification of a constitution - violence was not what intellectuals and democrats wanted their legacy to become.

The founding act of French democracy took place at the very beginning of the Revolution, just a stone's throw from the monarchic seat of power. On 20 June 1789, in the Real Tennis Room, not far from the Palace of Versailles, the deputies swore never to separate until they had given France a Constitution.

The assembly was constituted of the three Estates of the Realm: the Clergy, Nobility and Commoners. The deputies of the Commoners were expecting reforms, but they were soon disappointed, and refused to submit to the royal authority.

Refusing to sit according to their Estate, they solemnly established a National Assembly on 17 June 1789, along with a few members of the Clergy and the Nobility.

It was in the room of the Jeu de Paume that the famous oath was taken, forever marking the end to monarchical absolutism as the assembly acted NOT in the name of the king but that of the nation.

“We swear never to separate and to meet wherever circumstances require until the kingdom's Constitution is established and grounded on solid foundations.”

This event was a founding act of French democracy and a major contributing factor in the separation of authority and national sovereignty. It gave birth to the National Constituent Assembly, which in August 1789 voted for the abolition of

feudalism and the Declaration of the Rights of Man and of the Citizen.

Thereafter, the storming of the Bastille July 14, 1789 was only symbolic. Indeed, the nationalization of sovereignty was done at the Jeu de Paume room. Power was removed from the king/monarchy to be handed to the nation to which it then on belonged.

#### Constitutional Monarchy (1791-1792)

The Constituent Assembly had no real parliamentary deliberation experience, and so progress quickly stalled to a complete standstill. To address its lack of competency the Assembly decided to resort to the creation of ‘commissions’.

Members of those commissions accounted among others the likes of The Count of Mirabeau

Honoré-Gabriel Riqueti, marquis de Mirabeau or Jean le Rond d’Alembert.

In late August 1789 the text of the Declaration of Rights of Man and of the Citizen is adopted. This Declaration marked a momentous turn in France’s history as it firmly established France as a pioneer for Freedom and Democracy. To this day few documents have weighed more heavily onto nations’ consciousness than the Declaration of Rights of Man and of the Citizen.

This Declaration is today the heart of the French constitutional system. It is a major element of French law and fundamental freedoms. Moreover, it is or will be the matrix for many other constitutions, including the US Constitution.

It read:

“The Representatives of the French people, organized in National Assembly, considering that ignorance, forgetfulness, or contempt of the rights of man are the sole causes of public miseries and the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man, so that this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and duties; in order that the acts of the legislative power, and those of the executive power, may at each moment be compared with the aim and of every political institution and thereby may be more respected; and in order that the demands of the citizens, grounded henceforth upon simple and incontestable principles, may always take the direction of maintaining the constitution and welfare of all. In consequence, the National Assembly recognizes and declares, in the presence and

under the auspices of the Supreme Being, the following rights of man and citizen:

Articles:

1. Men are born free and remain free and equal in rights. Social distinctions can be based only on public utility.

2. The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

3. The sources of all sovereignty resides essentially in the nation; no body, no individual can exercise authority that does not proceed from it in plain terms.

4. Liberty consists in the power to do anything that does not injure others; accordingly, the exercise of the rights of each man has no limits except those that secure the enjoyment of these same rights to the other members of society. These limits can be determined only by law.

5. The law has only the rights to forbid such actions as are injurious to society. Nothing can be forbidden that is not interdicted by the law, and no one can be constrained to do that which it does not order.

6. Law is the expression of the general will. All citizens have the right to take part personally, or by their representatives, and its formation. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, are equally eligible to all public dignities, places, and employments, according to their capacities, and without other distinction than that of their virtues and talents.

7. No man can be accused, arrested, or detained, except in the cases determined by the law and according to the forms it has prescribed. Those who procure, expedite, execute, or cause arbitrary orders to be executed, ought to be punished: but every citizen summoned were seized in virtue of the law ought to render instant obedience; he makes himself guilty by resistance.

8. The law ought only to establish penalties that are strict and obviously necessary, and no one can be punished except in virtue of a law established and promulgated prior to the offense and legally applied.

9. Every man being presumed innocent until he has been pronounced guilty, if it is thought indispensable to arrest him, all severity that may not be necessary to

secure his person ought to be strictly suppressed by law.

10. No one should be disturbed on account of his opinions, even religious, provided their manifestation does not upset the public order established by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man; every citizen can then freely speak, write, and print, subject to responsibility for the abuse of this freedom in the cases is determined by law.

12. The guarantee of the rights of man and citizen requires a public force; this force then is instituted for the advantage of all and not for the personal benefit of those to whom it is entrusted.

13. A general tax is indispensable for the maintenance of the public force and for the expenses of administration; it ought to be equally apportioned among all citizens according to their means.

14. All the citizens have a right to ascertain, by themselves or by their representatives, the necessity of the public tax, to consent to it freely, to follow the employment of it, and to determine the quota, the assessment, the collection, and the duration of it.

15. Society has the right to call for an account of his administration by every public agent.

16. Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all.

17. Property being a sacred to and inviolable right, no one can be deprived of it, unless legally established public necessity evidently demands it, under the condition of a just and prior indemnity.”

In many ways - and such was likely the ambition of its authors, the Declaration was meant as a universal declaration against the tyranny of absolutism. France's political thought already existed beyond its sovereign territoriality and to some respect set the tone to how France would formulate its institutional evolution.

The idea was to create a universal template for democratic governance based

on a series of principles: rights and obligations.

Despite the undoubted success of the drafting of the Constitution, new debates, and tensions came to muddy the waters. While all agreed and arguably understood Montesquieu's separation of powers theory, problems pertaining to the nature of power surfaced, putting different segments of the population at odds with one another.

One of the main point of contention was the difficult and sensitive issue of the right of veto: should the king have a right of veto over those decisions the Assembly would take? The underlying issue surrounding the right of veto was the king's position in regards to the rule of law - and in this case the constitution.

Whereas monarchists understood the king to sit above the legitimacy of the constitution, republicans saw him as its subject - a nation official whose first duty was to the nation, and not to his throne.

From a republican perspective the monarch could not claim to any veto since his sole purpose was to serve the will of the majority - not supercede it or challenge it. And so a compromise was struck with a suspensive veto, which veto could be overturned by the Assembly through a majority of votes.

It is from this polarization of the Assembly that appeared the notions of Left and Right in French politics. The monarchists and conservatives are Right while reformers and revolutionaries progressives are Left.

France owes the Revolution another important change: this time administrative. In 1790 France's territories are organized into departments (counties) allowing for greater uniformity across a nation which remained otherwise chronically disengaged from the seat of power: Paris.

The idea was to build a national network where the central government would be represented, and any abuse of power crushed in infancy.

Another major development took place out of financial necessity. As France faced financial insolvency - the coffers of the state sat stubbornly empty, the Constituent Assembly took it upon itself in July 1790 to nationalize the clergy, and thus prevent from the Church's wealth to be claimed by the Vatican - an infringement against France's sovereignty the State was not willing to tolerate.

Such rupture marked the first of many decisions which will lead to the sidelining of the religious from the affairs of the State. By nationalizing the Clergy, as an institution, France de facto enacted its first act of secularization.

Needless to say that such a perceived attack against the Church rallied much anger against the Revolution, and eventually led to an insurrection led by monarchists.

Whereas Republicans held much distrust towards the Clergy, monarchist remained, for obvious reasons, profoundly attached to the Catholic Church. Began France's long struggle in between traditions and a modern political thought.

On September 3, 1791 the Constitution is finally put forward to then be sanctioned by the king on September 13, 1791. On September 14, 1791 the king takes his oath and the Constituent Assembly ceases to exist to be reborn the Legislative General Assembly.

The Constitutional Monarchy will end on August 1792.

While France's Constitution was by no mean the first constitution to be written out - the US beat the French to a punch by a few years (1787), it was France's first attempt to think itself anew institutionally. This 1st constitution would inspire the many that followed, and in many ways set the tone for much of France's political future.

With the Revolution, several ley lines were laid bare: separation of power, secularization, legitimacy of power, territorial sovereignty.

Under the Constitution legislative power is given to a single Assembly, which represents the nation. The Executive is vested in the King, himself assisted by a government - the latter is only there to assist the King, that is to say, it has no inherent power, while the King has the exclusivity of executive power.

As for the electorate, it remained drastically restricted - no universal suffrage, on the premise that the people could not be trusted. Such measure excluded the majority of the population and somewhat went against the Revolution's principle of political emancipation.

Such distrust of the public was not completely unfounded or irrational if one considers that most people had no understanding of politics, and little to no access to schooling. While one's social situation should not determine one's right, it

would be nevertheless irresponsible to entrust decisions of the state to a people unaware of the ramifications of such decisions, or ignorant to their complexity.

France's decision to shift sovereign power from the King to the nation profoundly affected Europe - prompting European monarchies to organize themselves into a coalition so that the French experiment would remain contained.

In spring 1792, King Francis II of Austria declared war on France, backed by a European Coalition who feared a "revolutionary export".

From the moment the Coalition marched against France, France will mobilise its forces - made strong of the many arms dedicated to the defense of their borders and their newly found freedom from absolutism, and push back unabashed.

As it is often the case France found its breath in adversity. As foreign armies clamoured at its doors, France had to reinvent its defense away from the military expertise of the King's Army to establish the People's Army.

Once more sovereignty would be asserted away from the Crown.

The revolutionary passion that ignited France would spread across the Old Continent, claiming monarchy after monarchy.

First Republic (1792-1804)

A) The Convention (1792-1794):

Following the official deposition of Louis XVI, August 10, 1792 which marked the end of the monarchy, France organized itself around a National Convention. This Assembly would govern France, during the most critical period of its Revolution.

The National Convention was elected to provide a new constitution for the country after the overthrow of the monarchy - it numbered 749 deputies, including businessmen, tradesmen, and many professional men. Among its early acts were the formal abolition of the monarchy (September 21) and the establishment of the republic (September 22).

The struggles between two opposing Revolutionary factions, the Montagnards and the Girondins, dominated the first phase of the Convention (September 1792 to May 1793). The Montagnards favoured granting the poorer classes more political power, while the Girondins favoured a bourgeois republic

and wanted to reduce the power of Paris over the course of the Revolution. Discredited by a series of defeats in the war they promoted against the anti-Revolutionary European coalition, the Girondins were purged from the Convention by the popular insurrection of May 31 to June 2, 1793.

The Montagnards controlled the Convention during its second phase (June 1793 to July 1794). Because of the war and an internal rebellion, a revolutionary government with dictatorial powers (exercised by the Committee of Public Safety) was set up. As a result, the democratic constitution approved by the Convention on June 24, 1793, was not put into effect, and the Convention lost its legislative initiative; its role was reduced to approving the Committee's suggestions.

Reacting against the Committee's radical policies, many members of the Convention participated in the overthrow of the most prominent member of the Committee, Maximilien Robespierre, on 9 Thermidor, year II (July 27, 1794). This Thermidorian Reaction corresponded to the final phase of the Convention (July 1794 to October 1795). The balance of power in the assembly was then held by the moderate deputies of The Plain (La Plaine). The surviving Girondins were recalled to the Convention, and the leading Montagnards were purged. In August 1795 the Convention approved the constitution for the regime that replaced it, the bourgeois-dominated Directory (1795–99).

As France prepares to become a republic, a new oath is given by the members of Assembly:

“On behalf of the nation, I swear to maintain liberty and equality, or die at my post”

On September 20, 1792 the Assembly gathered in its first official capacity to announce two basic principles: the abolishment of the monarchy and the need for the new Constitution to be accepted by popular vote before it could be enacted.

Unlike the first constitution which was adopted by a selected elite, France's second constitution would see the affirmation of popular legitimacy through popular vote.

Robespierre sets the tone of such a radical change in regime by calling for the King's death. His argument was that by executing the King, the monarchy would die with him, thus putting a definite end to the Statutory Theory.

On January 21, 1793 on the Place de la Concorde, Louis XVI is guillotined.

Irony would have it that Robespierre would follow Louis XVI by a few short months. As his rule became more and more intransigent in the name of the Republic, Robespierre will see his contemporaries turn against his authority 13 months after the adoption of the new constitution.

Maximilien Robespierre is arrested on July 27, 1794 to be guillotined on July 28, 1794.

1793 marks the beginning of the Reign of Terror - a period that will see the guillotine becomes centrestaged to political debate, as often protagonists ended losing their heads over points of contention.

The guillotine, the new instrument of egalitarian justice, was put to work. Public executions were considered educational. Women were even encouraged to sit and knit during trials and executions as to popularise and trivialise its barbarity.

The Revolutionary Tribunal, under the authority of Robespierre, ordered the execution of 2,400 people in Paris by July 1794. Across France 30,000 people lost their lives.

The Terror was designed to fight the enemies of the revolution, to prevent counter-revolution from gaining ground. Watch Committees around the nation were encouraged to arrest “suspected persons, ... those who, either by their conduct or their relationships, by their remarks or by their writing, are shown to be partisans of tyranny and federalism and enemies of liberty” (Law of Suspects, 1793). Civil liberties were suspended.

The Convention ordered that “if material or moral proof exists, independently of the evidence of witnesses, the latter will not be heard, unless this formality should appear necessary, either to discover accomplices or for other important reasons concerning the public interest.”

The promises of the Declaration of the Rights of Man were forgotten. Terror was the order of the day. In the words of Maximilien Robespierre, “Softness to traitors will destroy us all.”

Robespierre, the mastermind of the Reign of Terror, leader of the Committee of Public Safety, the executive committee of the National Convention, and the most

powerful man in France delivered a chilling speech to the National Convention:

“If the spring of popular government in time of peace is virtue, the springs of popular government in revolution are at once virtue and terror: virtue, without which terror is fatal; terror, without which virtue is powerless. Terror is nothing other than justice, prompt, severe, inflexible...It has been said that terror is the principle of despotic government. Does your government therefore resemble despotism? Yes, as the sword that gleams in the hands of the heroes of liberty resembles that with which the henchmen of tyranny are armed.”

France’s Reign of Terror serves a cautionary tale to the abuses of power nations open themselves to when ideological puritanism takes hold.

#### Le Directoire (1794 - 1799)

With the death of Robespierre France turned its back on the violent revolutionary purge which claimed the lives of so many. If France’s Revolution has been portrayed as a testament to all things democratic, it would serve us well to remember just how many lives were lost to this quest. Before France could find its footing, it had to overcome many great obstacles - among which its own prejudices and cultural limitations.

It takes a great people to formulate a future beyond its many imperfections and injustices. France, for all its faults, recognised it had a duty to imagine itself better. But before its institutions could reflect such ambitions, Society had to be transformed and its political traditions rewritten.

Following the end of Robespierre’s rule the Assembly commissioned a new Constitution - this time power would be better distributed and the electorate widened to better reflect and affirm the will of the people as the source of legitimacy.

Le Directoire was a five-member committee which governed France from 1795, when it replaced the Committee of Public Safety. On 9 November 1799, it was overthrown by Napoleon Bonaparte in the Coup of 18 Brumaire and replaced by the French Consulate.

In its first two years, the Directoire concentrated on ending the excesses of the Jacobin Reign of Terror -- mass executions stopped, and measures taken against exiled priests and royalists were relaxed.

Exhausted by military campaigns that drained the national economy and did

little to rally public support to its cause, the Directoire would show little to no resistance to the will of one ambitious military officer: Napoleon Bonaparte.

Backed by the Abbé Sieyès - one of the chief political theorists of the French Revolution, Napoleon was encouraged to carry out a parliamentary coup d'état on 8–9 November 1799. The coup abolished the Directoire, and replaced it with the French Consulate, led by Bonaparte.

### The Consulate (1799-1804)

In 1799, the French government of the Thermidorean Reaction - the Directoire, was foundering.

A brilliant young French general, having already won fame with a series of victories for Revolutionary France in Italy, Napoleon Bonaparte, was then busy fighting a fruitless war in Egypt. Hearing of the chaos the Directoire was facing: military exhaustion, political upheaval and financial difficulties, Napoleon abandoned his army and with great fanfare returned to Paris a celebrated hero. Following a successful coup, Bonaparte nominated himself First Consul, the cornerstone of his soon-to-be claim as Emperor of France.

Following a brilliant, and it needs to be said unexpected victory against Austria at the battle of Marengo, Bonaparte forced Austria to enter into a peace treaty: the Treaty of Luneville (February 1801). By March 1802, and the signature of the Peace of Amiens with Britain, Napoleon brought peace not only to France, but Europe as a whole - a feat if one considers the instability that reigned during this period.

As First Consul, Napoleon moved rapidly to institute order in France. He put down rebellions in the French provinces, created a secret police, led by Fouché and centralized the government of the various French departments under a system of prefects.

He then worked to defuse dissent by issuing a general amnesty, thus allowing all political exiles to return home.

Ever the political pragmatic, Bonaparte understood early on that he would have to heed the mistakes of his predecessors and not follow in their footsteps. Rather than built on revolutionary France's tradition of political exclusion on the basis of social class, Bonaparte supported a return of the nobility to power - thus securing a return to technocracy.

Maybe a greater democrat than many of his contemporaries Bonaparte simply favoured talent and expertise over birth. But such equilateralism did not endear him to all. On Christmas Eve, 1800, he was nearly killed by a bomb planted by conspirators wanting to restore the old Bourbon line of kings. Bonaparte would use the attempted murder to crackdown on the Jacobins whom he viewed as a greater threat to his ambitions than disgruntled royalists.

Finally, but certainly not the least of his achievement, Napoleon Bonaparte brokered a truce with the Church by signing a Concordat with the Catholic pope. This agreement smoothed over the rift between France and Rome the Revolution had caused, in which the French state assumed control over appointment of bishops and confiscated church lands.

Although Bonaparte refused to return the confiscated land to the Vatican he nevertheless conceded that Catholicism would once again be proclaimed the official religion of France, erasing the ‘heresy’ of the Revolution.

If Bonaparte had little love to spend on the Church he did however recognise the need for a smoother transition than the Revolution envisioned when it dissolved Absolutism. For change to last, Bonaparte grasped, change would have to be architected around and on the basis of some constants.

A true military strategist, Bonaparte knew which battle to pick and which ground to cede to further his cause.

In exchange for France’s gracious return to the religious fold, the Vatican recognized the Consulate, thus silencing much of the criticism levelled at France during this turbulent period.

Even under this new agreement with the Church, Napoleon upheld religious tolerance, which remained a fundamental principle of French life under his “enlightened despotism.” If he was technically a tyrant, Bonaparte offered a range of civil liberties France had only dreamt of so far in its history.

Napoleon also set about improving and modernizing the French government. He wanted government power to apply to everyone equally, legal class differences and hereditary government offices to be abolished, and salaries to be given to his bureaucrats, who were to be selected based on talent, not birth. Napoleon stabilized French currency by creating the Bank of France, and he simplified the tangle of French law by producing the Napoleonic Code.

In 1802, having brought prestige, power, and a sense of patriotism to France, Napoleon was elected “Consul for Life”. Monarchy was returning to France. In 1804, Napoleon did away with niceties and started calling himself what he had already been in reality for some time: the French Emperor.

The overthrow of the Directory and establishment of the Consulate marked the real end of the French Revolution. The Consulate was outwardly an institution of self-government, with its Council of Notables and Senate. This bicameral (two house) legislature was largely for show: Napoleon controlled the Consulate.

Under his rule, France entered a period of “Enlightened Despotism”.

Though he was a dictator, Napoleon's reforms represented a victory for the goals of the bourgeoisie in the revolution: legal equality reigned; government posts went to the “men of talent”; education increasingly determined people's social status; tax-exemptions based on noble birth ceased to exist, providing more funds for the government, which then engaged in bigger and more ambitious projects. The Napoleonic Code was one of Napoleon's most important creations. After the various governments of the Revolution, French law was a complete mess. Lawyers, not to mention the people, hardly knew what was legal and illegal anymore, since there were so many confusing and conflicting laws on the books. The Napoleonic Code created a single, streamlined system of law, which enshrined the basic tenants of the Revolution, such as the legal equality of all citizens.

Under a more merit-based system of selecting France's bureaucrats and officer, France became especially efficient, powerful, and patriotic. Napoleon threatened not only everything the old regime in Europe stood for, but that regime's very existence. At the same time, Bonaparte gave France the institutional direction it so passionately craved, and the socio-political stability it needed to formulate its next step.

What is mostly interesting about this period is how Robespierre, the Revolutionary, and Bonaparte, the Absolutist manifested diametrically different systems of governance.

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Quoted by D. Chagnollaud in *Histoire constitutionnelle et politique de la France* .1 (1789–1958), Dalloz, 2002, p. 51

For all of France's distaste for monarchical regimes, the Empire remains still a source of great pride, and did in fact pave the way for the modern French State.

### Continuous Upheaval

#### The First Empire (1804-1815)

In a simplified chronological classification, the Consulate and at least part of the Empire constitute a fourth Revolutionary period after the Constituent and Legislative Assemblies, the Convention and the Directoire..

When Napoleon Bonaparte grabs hold of the reins of power he did so without amending the Constitution. While he went about changing the shape of the State, he did not modify its rules of operation - at least not immediately. Even under Napoleonic rule the Constitution remained the ultimate authority.

When 1804 rung, France had seen so many different forms of government that historians suggested that the French Revolution was in fact a "revolution of the executive"<sup>2</sup>

From constitutional monarchy and the committees of the Convention to the Directory, none survived the revolutionary storm. Each failure merely confirmed that stabilisation necessarily meant reducing the absolute control of the legislature over the executive, in a sort of resetting of the institutional pendulum.

The scrapping of the 1793 constitution and the governmental organisation and practice of the Committee of Public Safety show that even the most "advanced" protagonists ended up by bowing to this practical necessity. The constitution written under the Directoire was a huge step forward, both on paper and, to a large extent, in hearts and minds: the supremacy of the legislature, which optimists had entertained for a while, had finally succumbed to the political realities.

France's political ambitions can be summarized in Antoine Thibaudeau's declaration at a constitutional debate: "I know only one democratic constitution", proclaimed Thibaudeau during the debate on the Constitution of An III. "It is the one which would offer the people freedom, equality and peaceful enjoyment of their rights"

Napoleon would not have disagreed, and indeed said as much in almost the same terms. In a famous letter to Charles de Talleyrand, who would become Bonaparte Foreign Minister, Napoleon notes: "The English charter is nothing but

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(Annales historiques de la Révolution française - (no. 332, April-June 2003 .2

a charter of privileges: it is a ceiling all in black though embroidered in gold".<sup>3</sup>

Under the Directoire, the executive and the legislature were both powerful but strictly separate, with no safety valve to alleviate conflicts between them. The Councils were incapable of controlling, never mind overthrowing the Directoire, while the Directoire had neither influence on the making of laws – not even a power of initiative – nor the weapon of dissolution. All that remained were encroachments by the one on the prerogatives of the other (a frequent occurrence), followed by a standoff and a power grab to settle the issue. The situation was compounded by the unwillingness of the directorial elites – basically moderate revolutionaries – to allow political alternation, whether in favour of the monarchists or the extreme left. It was to counter that instability and solve the problem of alternation – by making it impossible – that Sieyès instigated the “regeneration” movement that would culminate in the coup d'état of 18 Brumaire.

Sieyès had put the finger on a political reality many in France were calling for: the need to establish a strong government. His thinking was consistent with other strands of opinion which saw in the emergence of a leader the hope of an end to foreign wars and internal strife.

The new Constitution would be “a compromise between the aspirations of Sieyès and the other Brumairians in the Assembly and a mostly co-opted parliamentary oligarchy, and Bonaparte's own views”.<sup>4</sup> The new constitution, dated 13 December 1799 was approved by a plebiscite, the results of which were announced on 7 February 1800. For fourteen years it remained the foundation on which French institutions were built, although it underwent serious amendment.

The first important reform, on 4 August 1802, as well as granting Bonaparte the consulship for life and allowing him to designate his successor, completely overhauled the electoral process, the nomination process for members of the

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Letter from Bonaparte to Talleyrand, 21 September 1797, in Napoléon .3  
Bonaparte, Correspondance générale publiée par la Fondation Napoléon, Fayard,  
.2005, no. 2065

The ideas worked out in it were in circulation well before then: the rudiments .4  
may be found in Montesquieu. Dozens of pamphlets containing the same ideas as  
Qu'est-ce que le Tiers-État? [What is the Third Estate?] had been published in the  
years before the Revolution, such as Pierre-Louis Roederer's De la députation aux  
(.états généraux (Metz, 1788

legislature and the Senate's powers. The senatus-consulte of 18 May 1804 placed a hereditary emperor at the head of the Republic, "changing the forms of government but not the nature of the regime".

Between then and 1814, there were around 30 senatus-consultes that reformed the constitution, both directly and indirectly. Most concerned the revision of a particular detail, but a few, such as the abolition of the Tribunat (19 August 1807) <sup>21</sup> and the organisation of the regency (5 February 1813)<sup>22</sup>, modified the fundamental equilibrium at the heart of the constitution. This constitutional organisation was structured around principles already present in Bonaparte's letter to Talleyrand, mentioned earlier, and these were subsequently refined.

Executive authority was exercised by the emperor, who acted within his own area of competence (enlarged following each reform and subject to no control other than that of the nation, of which he was a representative), with a hierarchical administration below him. The two houses (the Corps Législatif and the Tribunat) drafted legislation and rarely intervened in affairs of an executive nature. "The government is no longer a direct product, as it once was, of the Corps Législatif; its ties with it are distant", rejoiced Napoleon.<sup>5</sup>

A Senate arbitrated in constitutional matters to "conserve the constitution".

The government was the crux of and the driving force behind the system: "The great order that governs the entire world must govern each part of the world", declared Napoleon to the Conseil d'État. "Like the sun, the government is at the centre of society; around it the many diverse institutions must trace their orbit, and from it they must never stray. The government must regulate the combinations of each of them in such a manner that they ensure the general harmony. Nothing is left to chance in the system of the world; in the system of societies, nothing must depend on the whims of individuals".

Originally, the power of the executive was tempered by the existence of the legislature and the executive's various councils. This gave the chambers considerable discretion with regard to legislation, and thus power to roadblock the executive. Most famously the Tribunat opposed the Code Civil and the creation of the Légion d'Honneur for the longest time.

Through perseverance and immutability over several years in power, Napoleon was able to impose a conception that increasingly operated in the executive's favour, dominating the executive, the legislature and, to some extent, the judiciary.

.Ibid., pp. 347-351 .5

This was achieved not through brute force but rather through a pragmatic and sequential approach towards the concentration of legitimacy in the person of a single sovereign.

The Napoleonic constitutions were technical not philosophical texts. Their authors were modest in their ambitions, shunning any thoughts of a “comprehensive endeavour” that would encompass every aspect of state and society. In this context, Napoleon’s reign was a progression, uninterrupted and almost unhindered, towards what Maurice Hauriou has called an “executive dictatorship”.<sup>6</sup>

Initially, the authors of the Constitution of An VIII retained the principle of a collegiate executive which had already prevailed after 10 August 1792 (government of the committees), in 1793 (the Montagnard Constitution, never implemented) and in 1795 (the Directoire). The consular regime with its three consuls did not on the face of it stray from this revolutionary norm. However, the consular triumvirate was unequal: the first of the three consuls had greater powers and took precedence over his two colleagues, whose power of restraint was limited to expressing disagreements and entering them in a register.

“It did not take me long to realise that I had either to give up or live on good terms with the First Consul [...]. Consul Lebrun had come to the same conclusion”, wrote Jean-Jacques Cambacérés.<sup>7</sup>

The proclamation of a hereditary Empire ended the legal fiction of collegiality. “Government” was now formally concentrated in the hands of one man. From this point on, no institution other than the Emperor could wield that power, not even a group of ministers or his advisory councils.

The constitution entrusted the government to the head of state alone and not to an executive body, as had previously been the case. However, as the separation of powers between the executive, the legislature and the judiciary was not affected, the term government referred only to the executive power.

In many ways, contemporaries found nothing shocking about such a concentration of power: it was in the French monarchical tradition, the success of an unequal three-man Consulate was encouraging and Bonaparte’s personal

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.M. Hauriou, *Précis de droit constitutionnel*, Sirey, 1923, vol. I, p. 338 .6

.Cambacérés, *Mémoires inédits*, Perrin, 1999, vol. I, p. 463 .7

ability to govern needed no further proof. The United States, a much-admired republic, had a one-man executive and still does: Article 2 of the Constitution of 17 September 1787, still in force, states that “the executive power shall be vested in a President of the United States of America”.

Justification was also found in the ancient Roman office of dictator, which entrusted power in times of crisis to one exceptional man while maintaining republican institutions. As the story goes, in 458 BCE Cincinnatus abandoned his plough to become dictator then, having defeated the Aequi, returned to his farm as before.

Bonaparte was no Cincinnatus but a Caesar, the dictator who wanted to become king, and did.

In a society permeated by references to antiquity, such a comparison would become reality. Napoleon Bonaparte’s personality, success and actions did the rest. “I have always commanded [...]; once I had command, I no longer recognised master or law”, he explained in a pragmatic and forthright take on Montesquieu’s axiom that “every man invested with power is apt to abuse it”.

Napoleon ended up by establishing an executive dictatorship. The foundations of that dictatorship were unstable, however, because Napoleon declined to elicit support from other institutions except by bending them to his will, leaving it reliant on concepts that were either far removed from the reality of power (the people) or of a philosophical or political nature (the nation) or still fragile (monarchy). In doing so, Napoleon set himself outside a movement that had begun in 1789 but left France in a very different situation from that of English-speaking countries, with a “mixed” regime, the latest avatar of which is the presidentialism of the present constitution.

Ultimately, it was against Napoleon that the rule of law prevailed. It comes as no surprise that in 1814 the proponents of Montesquieu’s theories should have sought to impose an “English-style constitution” on the King. He refused it and, in the Charter, maintained a strong executive, and so French constitutional history continued along its way.

It would be Napoleon’s military debacle which brought an end to his rule. With Paris under occupation on March 30, 1814, the Emperor’s legitimacy is called into question. On April 2, 1814 the Senate decides the forfeiture of the Emperor. He is obliged to abdicate.

Restoration (1814-1815 and 1815-1830)

First Restoration (1814 - 1815)

On April 6 of that year, with the abdication of the emperor is born a new regime: the Restoration. The kings of France attempt a comeback.

Designated as the legitimate successor of the Crown, Louis XVIII is propelled to power.

In mid-April 1814, Louis XVIII leaves England for Paris. On May 2, he arrived in Saint-Ouen, where he refuses the new Constitution of the Senate, and calls for a new text to be drawn. Rather than ratify a constitution Louis XVIII opts for a Charter - very much in keeping with English tradition.

The Charter of June 4, 1814 returned the power of the executive and the legislative to the king.

The Hundred Days (March 1815 - July 1815)

Determined to reclaim power to his name, Napoleon Bonaparte marches on Paris to a joyous crowd of supporters. While European capitals were rather keen to see return a king to France's throne, the people were less willing to give up on their dream for democratic change. And while the Emperor was not per se a revolutionary model, he offered the promise of a social equality no regime so far had ever manifested. A man of the people, born of the people Bonaparte was for many a French hero - a man who, by the sheer strength of his ambitions had risen to the highest office in the land.

Napoleon set foot in France on March 1, 1815. He then decides to go back to Paris, where it will arrive on March 20. As Bonaparte edges closer to the capital, Paris, Louis XVIII fled.

By the Additional Act of 23 April 1815 Napoleon proclaimed the Constitution of the Empire under a new name: "Empire under the Charter." It introduces institutions similar to those Louis XVIII had introduced. Thus, the legislature is divided into two chambers: the House of the Fathers and the House of Representatives. The emperor becomes the head of the executive.

It is important to emphasize that it is under the influence of liberal thinkers that Napoleon accepts the liberalization of an autocratic empire.

If France was happy to welcome its Emperor back, Europe was not. As it were

Europe would close the chapter on Bonaparte's ambitions and imprison him at Saint Helena where he remained until his death.

### The Second Restoration (1815 - 1830)

On July 8, 1815, Louis XVIII returns to Paris. The National Assembly is dissolved and the monarch calls for new elections in August 1815. Only since only a certain elite is allowed to vote, the king sees his claim to power backed by a majority of ultra-royalist deputies. As his head of government Louis XVIII will bring the Duke of Richelieu.

While the king concedes to a more liberal agenda to secure political continuity tensions will arise in between the executive and the legislative. Louis XVIII death in 1824 and King Charles X propensity to run reactionary policies ultimately leads to the fall of the regime.

Charles X will be brought to his knees by the Three Glorious, a three-day riot in Paris who saw the people come face to face with the security apparatus, only for the security apparatus to side with the people. July 27, 28, 29, 1830.

The Duke of Orleans is designated as lieutenant general of the kingdom, and offers an alternative to Charles X, who abdicate on August 2 to his little son, the Duke of Bordeaux. However, Louis Philippe takes power. Charles X leaves France, and with his departure France closes the curtain on the Second Restoration.

### The July Monarchy (1830-1848)

Enter Louis Philippe ...

The new king will enshrine the seat of his power in the Charter of August 14, 1830. There he proclaims himself King of the French - a clear shift in dynamics if we consider that since France thought itself a monarchy, its kings were kings of France and not the French. The affirmation of such a principle marks a return somewhat to the constitution of 1791.

But Louis-Philippe faces mounting criticism to his rule. Looked upon as an usurper by royalists, despised by republicans, and distrusted by the people, the King sits on an ejectable throne.

Louis Philippe will resume the previous charter, whose main feature was the Orleanist character, that is to say that the government is responsible before

parliament. Thus, the parliament may force the government to resign. This assumes that the same government must be acceptable to the majority. This is the beginning of a parliamentary system in France. The parliamentary system can be of two types:

- monistic parliamentary system: the government is responsible to parliament.
- the dualist parliamentary system: the government is accountable to the parliament and the head of state.

The July Monarchy implements a dual parliamentary system in France. While France's parliamentary experience under Louis-Philippe would not last for very long it would make a triumphant return under the Fifth Republic.

If France has seen many changes throughout its constitutional history, it has done so according to certain constants, proof many have argued that nations do have institutional default settings.

In many ways Louis Philippe was a victim of modernity. Faced with social developments few could have predicted: the Industrial Revolution and the rise of the proletariat, France's newly founded monarchy would not survive such test.

Opposition to his rule starts in 1843 in the form of the "Campaign Banquet", where detractors to the monarchy organized banquets to discuss, and debate the ouster of the king.

In late December, 1847, Louis Philippe denounces the campaign and in January 1848, his government bans the Banquet of the 12th arrondissement of Paris. This decision will spell the end of his reign.

On February 22 of that year, demonstrations become more numerous and virulent - violence breaks out when the National Guards are sent to break up rallies.

On February 24, the King is forced to abdicate.

The fall of Louis Philippe led to the organization of a provisional government. The Republic is proclaimed on condition that the French ratify this choice.

On March 2, 1848 the government adopts the principle of universal suffrage. This is the beginning of the Second Republic.

The Second Republic (1848-1852)

It was now the turn of the Republic, and it was proclaimed by Alphonse de Lamartine in the name of the provisional government elected by the Chamber under the pressure of the mob.

This provisional government with Dupont de l'Eure as its president, consisted of Lamartine for foreign affairs, Crémieux for justice, Ledru-Rollin for the interior, Carnot for public instruction, Gondchaux for finance, Arago for the navy, and Bedeau for war. Garnier-Pages was mayor of Paris.

But, as in 1830, the republican-socialist party had set up a rival government at the Hotel de Ville, including L Blanc, A Marrast, Flocon, and the workman Albert, which bid fair to involve discord and civil war. But this time the Palais Bourbon was not victorious over the Hotel de Ville. It had to consent to a fusion of the two bodies, in which, however, the predominating elements were the moderate republicans.

One party, seeing that in spite of the changes in the last sixty years of all political institutions, the position of the people had not been improved, demanded a reform of society itself, the abolition of the privileged position of property, the only obstacle to equality, and as an emblem hoisted the red flag. The other party wished to maintain society on the basis of its ancient institutions, and rallied round the tricolore - France's national symbol.

This confrontation in between two very distinct political views were in itself a reflection of the change society was going through as modernity saw rise a new set of issues, and with it, new ambitions.

The provisional government having resigned, the republican and anti-socialist majority on May 9, 1848 entrust the supreme power to an executive.

The Constitution (November 4, 1848) introduces new elements: it innovates by creating a President of the Republic elected by direct universal suffrage. This is unprecedented anywhere. In addition, it organises a one seat Legislative Assembly, composed of 750 members elected for 3 years. This is the first and only example of a presidential system in France. The President can not dissolve the Assembly, and it can not remove the President.

All revisions were made impossible since it involved obtaining three times in succession a majority of three-quarters of the deputies in a special assembly.

The Constitution de facto made the presidency an office dependent upon

popular acclamation.

Ensued a long struggle for political dominance in between various factions, among which

the recently reorganized Imperialist party headed by Prince Napoleon Bonaparte.

Louis Napoleon, unknown in 1835, and forgotten or despised since 1840, had in the last eight years advanced sufficiently in the public estimation to be elected to the Constituent Assembly in 1848 by five departments. He owed this rapid increase of popularity partly to blunders of the government of July, which had unwisely aroused the memory of the country, filled as it was with recollections of the Empire, and partly to Louis Napoleon's campaign carried on from his prison at Ham by means of pamphlets of socialist tendencies.

Louis Napoleon skilfully exploited tensions to assert his authority, calling insistently for a revision of the Constitution.

From August 8, to November 12, 1850 he went about France stating the case for a revision of the constitution in speeches which he varied according to each place - he held reviews, at which cries of "Vive Napoleon" showed that the army was with him; he superseded General Changarnier, on whose arms the parliament relied for the projected monarchical coup d'etat; he replaced his Orleanist ministry by obscure men devoted to his own cause, such as Morny, Fleury and Persigny, and gathered around him officers of the African army, broken men like General Saint-Arnaud. In fact, he practically declared open war. This battle of will cumulated on December 1 and 2, 1851, the anniversary of Austerlitz, when Louis Napoleon dissolved the Chamber, re-established universal suffrage, had all the party leaders arrested, and summoned a new assembly to prolong his term of office for ten years.

The deputies who had met under Berryer at the Maine of the 10th arrondissement to defend the constitution and proclaim the deposition of Louis Napoleon were scattered by the troops at Mazas and Mont Valérian.

The resistance organized by the republicans within Paris under Victor Hugo was soon subdued.

The plebiscite of December 20, 1851 ratifies by a huge majority the coup d'état in favour of the prince-president, who alone reaps the benefit of the excesses of the Republicans and the reactionary passions of the monarchists.

The second attempt to revive the principle of 1789 only served as a preface to the restoration of the Empire.

### The Second Empire (1852-1870)

January 14, 1852 sees the promulgation of a new constitution. This gives the chief executive full powers. The legislature is composed of three rooms: the State Council, the Senate (removable) and the Legislature (sanctions law).

Most of the state power is in the hands of Napoleon, who becomes emperor in November 1852.

The Prince-President becomes Napoleon III.

The Second Empire can be looked at from two perspectives: one recognises the authoritarian nature of the Empire and the other sees instead a willingness to embrace a liberal agenda.

Indeed, from 1861, the Empire is moving towards a liberal system where freedoms are not only tolerated but promoted. At the same time Napoleon III will work to silence the political opposition by rallying more powers to his name.

Despite the strong and ubiquitous state authority, France moves and changes. Napoleon III is generally well accepted. Under his rule links with England are tightened - both countries are fighting together against Russia to save Turkey during the Crimean War (1854-1855).

In addition, the Second Empire provides some much needed prosperity: development of railway networks, urban redevelopment with Georges Haussmann.

From 1861, in view of growing social unrest Napoleon III begins to soften his rule to better focus on providing the people with adequate reforms. This softening of tone leads parliamentary debates become public and an increase of the power of the legislature in the financial sector.

1864 will see the creation of the first French Union. The Emperor also works to develop France's welfare system - a legacy which to this day has survived political developments and regime change.

Early 1870 Napoleon III will call for a series of constitutional reforms by way of popular referendum to introduce a parliamentary system. Napoleon III constitutional project would however be thwarted by the King of Prussia, who, in order to quell challenge to his own throne decides to declare war on France, and thus unite divisions in the hatred of one common designated enemy.

War is declared on July 19, 1870. On September 2 of that year, comes the capitulation of Sedan. On September 4, the Assembly proclaimed the downfall of the Empire and proclaimed the Republic.



