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The French Constitutional Coming Of Age – A Merger Of Constitutional Traditions

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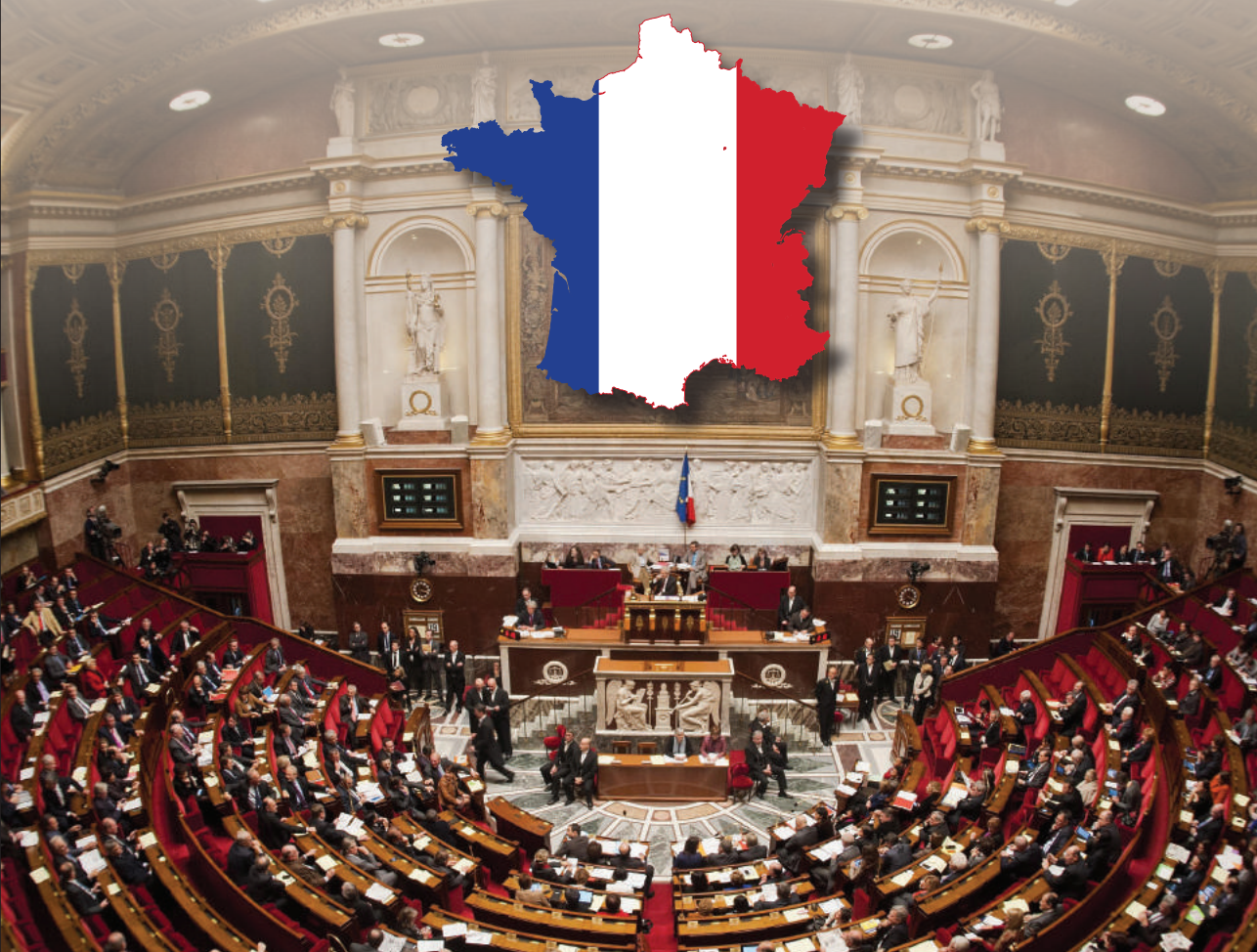

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The French Constitutional Coming Of Age – A Merger Of Constitutional Traditions

Catherine Shakdam *

A constitution is the fundamental and basic law, of a country. The constitution determines the fundamental political principles of the government, rules of procedure of that government, rights and obligations of the citizenry and methods to ensure accountability of governmental branches.

As it is well-known, France has had a tormented constitutional history, going through many

different political regimes, and no less than fifteen constitutions since the French Revolution

in 1789. As written by Van Nifterik: "the French should know about constitutions! One can differ as to whether the history of France should be considered a fruitful garden of constitutional thought, a graveyard of constitutional experiments, a 'musée des constitutions', or a minefield; in any case it is beyond doubt that the French are rather experienced in constitutions and

constitutional changes."[1]

The current constitution, which provides for the basic rules for France's Fifth Republic, was adopted in 1958. It is the longest lasting French constitution after the constitutional laws of the Third Republic

1. van Nifterik, G.: French Constitutional History, Garden or Graveyard? European Constitutional Law Review (EuConst), 3 (2007) 3, 476.

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(1875). But such longevity did not come without its reforms and amendments. The Fifth saw its constitutional text amended twenty-four times so far. But if France's journey has been eventful, it has not been pointless. One could argue that France's rich political thought forced such institutional pluralism – that, and a pursuit of perfection.

There are some benefits to such trials and errors indeed. If anything, France learnt early on to define what it did not want.

As to the significance of the Constitution in French political life, it is important to

recall that prior to 1958, the system was centered on the principle of general will, which was, in the words of Jean-Jacques Rousseau, the expression of the "volonté générale."[2]

As such, it was sovereign and should not be subject to judicial control.

This reluctance to submit statutes to any kind of judicial oversight was also reminiscent of the long-standing distrust of the French political class and society towards judges, dating back to the Ancien Régime, where judges (parlements) had been mostly concerned about maintaining privileges.

Consequently, the Constitution was essentially a symbolic document, and was endowed with no serious enforcement mechanism.

The 1946 Constitution (Art. 91) did provide for a Comité Constitutionnel to check whether the adoption of legislation required the revision of the Constitution. The procedure was nonetheless difficult to engage and remained unused.

2. Declaration of Rights – 1789

The 1958 Constituant deviated slightly from this tradition, by setting up a body, the

Conseil Constitutionnel, whose task was to check the conformity of legislative proposals and bills with the Constitution. This control was nonetheless minimalist; it provided only for concentrated, abstract and a priori constitutional review. Once in force, a statute could no longer be contested, even where it had not been subject to prior 'constitutional clearance' or where its incompatibility with constitutional rules only unfolded through its application.

Moreover, the control was political.

First, it was essentially aimed at limiting parliamentary influence over executive affairs and at preventing governmental instability of the kind which destabilised the Third and Fourth Republics. Basically, the Constitutional Council was meant to be the 'guard dog of the Executive.'

Second, only a restricted number of political personalities could refer legislation to the Constitutional Council for review. These were the President of the Republic, the Prime Minister or the President of one of the two parliamentary chambers (Assemblée Nationale and Sénat). Where all belong to the some political party, the likelihood of referral would be almost non-existent.

Third, the membership of the Conseil Constitutionnel[3] was political too, with no legal competences required from its members, and a nomination process controlled by political personalities (three members nominated by the President of the Republic, three by the President of

3. Le Conseil constitutionnel et l›autorité judiciaire: l›élaboration d›un droit constitutionnel juridictionnel - Thierry Renoux

the National Assembly and three by the President of the Senate), and former Presidents of the Republic were ex officiolife members.

…

As it was established in my previous research paper on France's constitutional history, France's coming of age, or maybe better yet, France's constitutional maturity has been the product of much reflection, debates, and institutional back and forth.

If anything, the Fifth Republic is a compounding of constitutions past, the direct result of a long and at times tumultuous evolution of ideas and political principles.

French history is often divided into two periods: pre and post Revolution. This representation seems to be particularly prevalent when it comes to constitutional history. It emphasises the ideological , societal, cultural, and legal break that took place in 1789 when a revolution overthrew absolute monarchy.

The Revolution as it were, has marked what historians have referred to as 'modern constitutional history' in France: the new political elite wanted a fresh start and with revolutionary zeal, the old legal system – institutions, legislation, rules, and all that came with it – was soon abolished in its quasi-entirety.

It is because the Revolution marked such a profound break in France's conceptualisation of power and sovereignty, that 1789 has been portrayed as a real watershed in both political and legal terms. Not only did the revolutionaries established a completely new constitutional settlement with a new organisation of society to boot, but they founded the legitimacy of this new system on a clean break from the past.

France Revolution of course was not the result of one identifiable factor – one upset the people refused to let go of but rather a litany of grievances, whether philosophical, economic, monetary, social, ideological or political, which ultimately pushed France's monarchy over the proverbial edge.

By spring 1789 France was ready to be reinvented anew, its system of governance a relic the people wanted gone.

It is most likely France's institutional inefficiency which precipitated its monarch's demise, and with him a system based on entitlements.

French kings traditionally ruled as absolute monarch and thus, did not recognise many … if any, limitations to their rule: power and sovereignty.

For all intents and purposes the kings of France were not simply the ruler of France, they were France – the expression and embodiment of national sovereignty which power was bestowed upon them by God Himself. Any criticism levelled at the king was essentially an attack on France.

The Revolution would quite literally explode this equation of power to return sovereignty to the people. As far as revolutionaries were concerned the voice of the people became the voice of God – vox populi, vox dei.

But if France was crippled by an antiquated system, it is the state of its finances which triggered social mobilisation, forcing hundreds of thousands to bear arms against the monarchy and call for a grand redress.

What is most fascinating about the French Revolution and France'

subsequent constitutional journey remains the evolution of the political thought[4] – the manner in which philosophy would come to manifest a system of governance aimed at elevating, if not redressing perceived social injustices by shifting the seat of power from a governing elite to the compounded will of the people.

The Enlightenment movement, or as many have preferred to call it: the Age of Reason, (18th century Europe) aimed to shed a new light on all aspects of society, most predominantly its class system. It contested the political value and efficiency of absolute monarchy, rejected the economic choices of a badly reformed feudal system, and denied the right of any religion to organise society and political power.

The movement wanted first and foremost to establish rationality as a founding principle for a new organisation of society. From this followed a right of all men to formal equality. Furthermore, it reduced religion to a branch of philosophy. It was a time of religious (and anti-religious) innovation, as Christians sought to reposition their faith along rational lines and deists and materialists argued that the universe seemed to determine its own course without God's intervention.

While the monarchy found in religion the source of its political and moral legitimacy, democracy would provide the legitimacy for this new society.

France's constitutional beginnings, the very premise of the Revolution was based on such an immovable principle – that legitimacy lies with the people, and that before the State all stand equal.

4.Liberalism Under Siege: The Political Thought of the French Doctrinaires – By Aurelian Craiutu

Constitutionalism

As Henry Bertram Hill remarks in his work on constitutionalism in France, France had no real constitution to speak of prior to the 1789. "The French monarchy began nowhere and ended nowhere," he notes in French Constitutionalism: Old Regime and Revolutionary.

Prior to 1789 no great documentary landmarks indicated the way, and noone in France, the king included, could have produced the fundamental laws of the land if asked to do so. And yet, yet France's political life rested upon a long amassed tradition of administrative practices, that, over the years and centuries became customs – and therefore legally binding.

Such habit, that de facto could take precedent over the written word, or even come in its stead, has in many ways define France's constitutional history, and most importantly, shaped the manner in which amendments and all other constitutional changes.

In a research paper for Princeton University Giovanni Sartori writes: "In the 19th century the concept of "constitutionalism" was widely understood to mean a fundamental set of laws/principles corresponding to an institutional arrangement to limit arbitrary government power. Post WWII, this consensus collapsed, and now constitutions can be grouped into three categories: garantise constitutions, corresponding to the 19th century understanding; nominal constitutions, which are enforced but merely codify and enable the existing constellation of power; and facade constitutions, whose de jure substance corresponds to the 19th century understanding but de facto are never enforced."

Sartori understood constitutionalism according to the following:

- Garantiste constitutions: These are constitutions proper, congruent with the 19th century consensus, which limit arbitrary government power and ensure limited government
- Nominal constitutions: These constitutions are "fully applied and activated," but they perform no limiting function vis-a-vis the government because they merely formalize "the existing location of political power for the exclusive benefit of the actual power holders".
- Facade constitutions: These take on the appearance of a true constitution, but "what makes them untrue is that they are disregarded".

French constitutional law rests on a striking paradox: while the change of constitutional paradigm happened very quickly in 1789, it took a furter 200 years for democracy to be fully embedded in constitutional and political practice. In contrast [5]with the United States, where the 1776 constitution generated political stability, France endured a long period of political and constitutional upheaval before its thought could be finally formulated.[6]

But France's chaos was not fruitless or pointless – it stemmed from a yearning for perfectionism, and an understanding that the principles of Revolution had to be upheld and incorporated within the fabric of the state as to serve the will of the people, and the welfare of the nation.

French constitutional law has been tainted by difficult beginnings.

5. Giovanni Sartori: "Constitutionalism: A Preliminary Discussion" 2015.
6. Constitutional History of France – Henry Lockwood

Every so often a new constitution would be drafted as to establish a new system, politicians and lawyers hoped, would bring stability to the nation, and allow for France to find its democratic footing. Through all the noise and tumult of regime changes, it is the perfect democracy France was searching for …

To rid France of its constitutional 'malaise' drafters after drafters attempted a series of reforms, fashioning new mechanisms and systems, forever hoping that one would stick. Rather than draw from past experience, although to an extent experience allowed for greater insight, French lawyers and politicians quite simply stumbled for a while before the right governing balance could be struck – and again, not for a lack of trying. A country in perpetual state of reinvention France tried its hands at many systems of governance before settling on the Fifth Republic.

The philosophy of the Enlightenment taught French revolutionaries to believe in the power of constitutional law to tame and shape the political system. Accordingly they believed that a well-written constitution would suffice to capture, frame, and submit political behaviours and practices to the law. Soon, the failures of past constitutions were explained by the inadequacy of the specific constitutional instruments. This led drafters to experiment, constantly in search as they were, of the elusive 'perfect constitution'.

From the perfect constitution would flow the perfect institutions – in harmony with the wishes of the people to best secure their happiness … or so the belief stood.

This of course fed into a certain constitutional frenzy whereby many constitutions were written, few lasted long enough to make their mark – leaving France to swing rather violently in between extremes:

parliamentary to presidential, constitutional monarchies to republics, unicameral to bicameral parliaments, direct to indirect suffrage.

With the speed of French constitutional change comes the realisation that the ideal of constitutionalism and democracy did not take root easily in France. The Revolution of 1789 was only the beginning of a long and tortuous road. But such volatility was not symptomatic of disinterest or even disenfranchisement in Democracy. It was rather France's statesmen loyalty towards democratic political rationality which allowed for change to bear fruits.

If at first the development of French constitutional history seems haphazard[7], it is nevertheless possible to identify some distinctive trends and bring some order to this apparent chaos. Also, behind this rich and complex history, it is possible to discover a certain conception of constitutionalism, a conception which has been partly responsible for the way constitutional history unfolded.

The mechanisms of change

Although constitutional change in France appears random and chaotic, it can be explained and even ordained by reference to the systematic way it took place. Historically speaking France has always very much relied upon a dynamic body of custom, and this has carried even after a constitution was written out.

New constitutional instruments were often drafted in opposition to previous texts and regimes. At a micro-level, constitutional change would often consist in a series of chain reactions – constitutional practices and experiences of one regime would inform the drafting and

7. The French constitution: its origin and development in the Fifth Republic, By Bernard Chantebout

adoption of the next. This is exemplified by the innovations found in the constitution of August 22, 1785, drafted soon after the fall of Robespierre[8]: for the first time Parliament comprised two chambers and the Executive was headed by three 'directeurs'. This institutional structure was clearly adopted to prevent a dictatorship of either branch of government: while the legislative chambers would keep each other in check, the collegiate nature of the Executive would make it difficult for a dictator to rise to power.

However, this complex institutional structure multiplied potential conflicts.

Interestingly, a few regimes and failures later, the constitution of the Second Republic would return to a single-chamber Parliament and to a single-person Executive in a bid to avoid unnecessary conflicts.

For the most part of its history, France has battled in between a strong Executive and a powerful Legislative - forever agonising on how best to strike balance, and prevent abuses of power.

Generally, new provisions were drafted and new institutions created in an attempt to quell undesirable practices and behaviours. Much of France's apparent institutional flip-flopping had to do with a keen determination to address and redress errances.

If France faulted it did on account it ambitioned a system worthy of its philosophical aspirations, and a direct understanding of the cost failing would entail.

The Third Republic suffered from chronic governmental instability and coalition government struggled too legislate through Parliament.

8. Robespierre: A Revolutionary Life, By Peter McPhee

When the outbreak of World War I made it necessary for the business of government to be rapid and efficient, a new device (the décret-loi) was created.

In French law, the décret-loi was an act of government made under statutory authority in a field normally falling within the competence of the law (legislative). This is one of two variants of the delegated legislative procedure. The décret-loi was, in France, under the Third and Fourth Republic, an exceptional extension of the regulatory power in the legislative field, allowed by an enabling law passed by the Parliament.

In the last years of the Third Republic, the recourse to décret-loi had become so frequent that the 1946 Constitution prohibited it by its article 13. But, the legal rules established the cedant to the parliamentary habits, the majority of the governments which succeeded to power after 1953 resorted, in particular through the practice of the framework law, to the system of décret-loi, however was prohibited by the Constitution.

Under the Fifth Republic, the institution of ordinances, provided for and regulated by Article 38 of the Constitution, corresponds to the old practice of décret-loi. The government can thus, "for the execution of its program, ask Parliament for authorization to take by ordinance, for a limited time, measures which are normally the domain of the law". But whereas the decrees, intervening in matters which are not legislative, can always be attacked with the litigation, the ordinances (as formerly the décret-loi), decreed by the administrative authority in the field of the law, are no longer once ratified by Parliament, they are subject to appeal. Before ratification, the Council of State considers, according to a consistent jurisprudence since 1907, that the acts taken by the

government by virtue of a legislative delegation remain administrative acts subjected to the contentious control of the administrative judge.

It no longer exists under the Fifth Republic. It was replaced by the prescription procedure governed by Article 38 of the 1958 Constitution. Unlike legislative decrees, legislative orders require the ex-post approval of Parliament before being incorporated into the corpus legislative.

With the return of ministerial instability after the war, the use of the décret-loi became the norm. Still, the practice was technically speaking contrary to the constitution and thus represented an usurpation of legislative power by the Executive. Such paradox however did not deter state officials in the least.

But as time went by many saw in such a practice an erosion of the constitution and consequently worked to condemn the practice. It would take the Fourth Republic for such reform to take effect.

Article 13 of the constitution of the Fourth Republic states that legislative power which belongs to the National Assembly cannot be delegated. However, ministerial instability soon crippled the new regime and led to the ue of similar mechanisms, such as décret-loi, despite the prohibition.

Interestingly, with the advent of the Fifth Republic, the official stance changed and a new political direction was given preferences. With instability being laid at the feet of a temperamental Parliament, the need for a weaker Legislative and an empowered Executive became more palatable … France was ready for yet another transformation.

It must be noted that such a change of political tone was very much in line with General Charles de Gaulle's aspirations.

Article 38, Parliament can delegate to the Executive the power to legislate in micro-level. In the end, the once unconstitutional practice of décret-loi was integrated fully into the constitution.

Beyond the wish to increase the power of the Executive, there may have been a recognition that resistance against deep-rooted constitutional practices is futile.

Ordo ab chao

On the surface, French constitutional history has been chaotic, most often than violent, and almost always in a state of perpetual reaction to what came before. At first glance France appears to be a constitutional whirlwind of antagonistic viewpoints and contradictories political thoughts.

And yet … yet among such chaos, order is to found, at least in that there is continuity in meaning and commonality in the challenges faced.

Analysts have come to look upon France's constitutional history at a macro-level to observe cycles.

Each constitutional cycle creates a dialectical dynamic as it encompasses three distinct periods:

1- the primacy of Parliament.

2-the primacy of the Executive

3- a cooperation of all branches of government under political synthesis.

According to this representation France, since 1789 completed two full cycles - the first one from 1789 to 1848, and the second from 1848 to 1940.

Within these cycles, the legislature was a dominant power between 1789 and 1795, and again between 1848 to 1851.

By contrast the Executive has clear primacy in the two periods between 1795 and 1814, and 1851 to 1870.

Finally the two eras of synthesis, stability and cooperation of power spanned the long period of the Restoration (1814-1848) and the Third Republic (1875-1940).

This representation of France's constitutional history has the merit of unearthing a deeper pattern of bringing order to an otherwise confusing history. Surprisingly, it also highlights an underlying trend in constitutional stability: over the 151-year period covered by the two constitutional cycles (1789-1940), the two periods of synthesis, stability and cooperation of power add up to a total of 99 years. France's political turbulence may not be that when looked from a distance.

A third constitutional cycle began with the 1946 constitution: the recognition of the primacy of Parliament in the Fourth Republic was swiftly counteracted by the Fifth Republic and its assertion of the Executive's dominance. Although it early for a clear assessment, one cannot help but wonder whether the constitutional reform of July 2008 will help foster a full constitutional cooperation and long-term political stability.

Beyond the constitutional cycles presented above, it possible to identify three constitutional traditions in the rich tapestry of French constitutional history: the republican, the parliamentary and caesarian traditions. While the republican tradition was established by the 1789 Revolution, the parliamentary tradition was born out of the experiences of the restoration.

There merged with the Third Republic and continued into the Fourth Republic. By contrast, the caesarian tradition found its expression in the Bonapartist movement and the two empires and is said to inspire the present constitution.

These traditions represent a diverging expression of political power: in the parliamentary tradition, sovereignty of the people came to reside in Parliament and expressed itself by way of legislation, while in the caesarian tradition, the strong leadership and authority of the Executive is tempered by the need for popular (if ont democratic) support. In the parliamentary tradition, regular elections frame the activities of Parliament and in the caesarian tradition, the leader resorts to plebiscite/referendum to strengthen his legitimacy. These traditions have alternated at regular intervals since 1789.

History teaches us here that while France saw many and great changes to its systems of governance, constitutional change came through a certain degree of continuity.

It is such continuity that has allowed France to survive numerous crises.

There are three main components to this continuity: longevity of political personnel, permanence of administrative law and structures, and a certain vision of society.

Most striking has been politicians/state officials' ability to see their career span across several 'regimes' proving that while political forms were forever fluid, the core constitutional identity of France, as a sovereign nation, remained a strong enough anchor.

Strength was found in the concept of constitutionalism itself. Sovereignty one may even theorise lies in the perpetual philosophical evolution of democracy as a founding principle and source of legitimacy.

A surprising number of politicians managed to lead successful political careers spanning multiple regimes. Talleyrand os one of the best examples of such political longevity. Of aristocratic extraction, he was a bishop in 1789. A member of the Etats-Generaux, renamed National Assembly, he espoused revolutionary ideas. In 1792 he was sent as a special envoy to Britain (to persuade the Cabinet to support the French cause) and later to the USA. He returned to France in September 1796 and served as a minister for foreign affairs during the Directoire and under Napoleon Bonaparte until 1809. He played a key role in organising the Restoration of Louis XVIII and served as his minister for foreign affairs. After the fall of Charles X in 1830, he was instrumental in arranging for Louis-Philippe to ascend the throne. Under this last regime, he served as ambassador to the United Kingdom and negotiated the Franco-British agreement of 1834.

With governments permanently forming and falling, politicians for the most part seemed engaged in a forever game of musical chairs. For instance Henri Queuille, whose career spanned two Republics, was member of Parliament from 1914 to 1958; he participated in 33 different governments (three times as head of government and 30 times as minister) and was minister for agriculture for eight years - a formidable record for France.

Public administration also provided a strong element of continuity throughout French history: many new administrative structures were put in place soon after the 1789 Revolution or under the Napoleonic era. Once in place, they continued in existence whatever the regime.

For instance, the administrative division of the French territory into 'départements' as imagined by Napoleon Bonaparte, continues to this day, and remains a strong legacy of revolutionary France.

Finally an element of continuity is also found in the adoption and conservation of the basic societal choices and principles established by the Revolution and enshrined in the declaration of 1789. The Revolution led to the adoption of a new organisation of society which remained unchallenged by successive regimes, even after the restoration. Similarly, the political status of citizens may have been un-equally protected throughout French constitutional history but the declaration indicated goals clear goals in this regard; these often served as references and reminders. This created a commonality of vision which remained constant whatever the degree and extent of constitutional change.

Through this experiences of constitutional change, a certain conception of constitutionalism was gradually adopted in France. This conception has in turn driven constitutional change.

The era of experimentation

Undeniably, the revolutionary movement of the end of the 18th century triggered the birth of France of modern constitutionalism. Although the movement was inspired by political philosophers and constitutional theoreticians, the translation of these doctrines into practice was far from straightforward. This may explain to some extent the repeated failures France went through.

For instance, when the first constitutional monarchy came to an abrupt end, the revolutionaries were faced with the task of adopting a new political system. There may have been an abundance of writings

and theories on popular sovereignty and representative democracy at the time, but the translation of these theories in institutional terms proved quite challenging, especially as no other republican system was available in Europe at the same time to draw experience from.

Constitutionalism had not yet reached a high degree of sophistication and this led at times to a rather naive interpretation of its requirements.: for instance, during the First Republic, drafters believed that popular sovereignty expressed itself in a single and clear voice; they would not contemplate a Parliament with two chambers as they felt it would divide this expression of sovereignty. Ironically, once the desirability of a Parliament with two chambers was recognised, the drafters grapples with other difficulties: the division of labour mentioned above could not easily be resolved by a reference to separate legitimacies. It is not surprising that deep political conflicts raged throughout the regime.

French constitutional history is in fact riddled with such experiments. Numerous regimes and permutations were tried one after the other: slowly constitutional mechanisms were refined and the understanding of constitutionalism improved.

Still, lessons were hard to learn, especially when it came to legitimacy: for instance, although the authors of a second Republic wished to subordinate the President of the Republic to the Parliament, they stipulated that both be elected with direct universal suffrage. The authors did not realise that the recognition of a hierarchy or priority between the two powers would be impossible. Again, although the Sénat of the Third Republic was elected with indirect suffrage, it benefited largely from the same powers as the first chamber. This exacerbated greatly the dysfunctions of the regime. In fact, one had to wait for the Fourth Republic to see the relative legitimacy of each

house match its respective power.

French constitutional history may have lacked continuity but it partly explained by the need to experiment with new mechanisms and new solutions in a bid to uncover a system that would bring stability.

The French experimented for 200 years … it is hoped that modern constitutionalism and modern democracies have benefited from these repeated attempts.

The French paradox

The multiple experiences of drafting new constitutions find their root in the doctrines of the Revolution. The sovereignty of the monarch gave way to the sovereignty of the people and a degree of reverence was attached to the various texts representing the direct expression of this sovereignty. This led to constitutionalism being conceptualised in a rather rigid manner.

The written word was seen as having such importance that it needed to be relied upon fully and totally. In this theoretical framework, it is difficult to recognise a place for constitutional practice: any practice outside the text of the constitution cannot be countenanced. This should have ensured the triumph of law over facts.

However, throughout French constitutional history, practice was repeatedly at variance with the constitution itself. This created a fundamental paradox in French constitutional law: while constitutional instruments were revered and placed at the top of the hierarchy of norms, constitutional practices often went against them.

Furthermore, as constitutions were meant to frame the strict exercise of political power, those ridden with contrary practices tended to lose

their legitimacy and be replaced.

Moreover, little value was attached to the continuity of constitutional regimes and few were given the chance to transform themselves.

On the contrary, successive constitutions founded their legitimacy on clean breaks from the past. This created a chronic inability of regimes to evolve.

Little attention was given at first to the protection of the primacy of constitutions. To begin with, there was no clear distinction in between constitutions and ordinary statutes: both categories of text were often adopted by an elected assembly which embodied the expression of the will of the people.

Arguably, there were few legal techniques to ensure a clear superiority of constitutions over statutes: it was difficult to anul for breach of a text which had been adopted in the same manner as the statute it purported to review. Furthermore, as statutes were seen as an expression of the sovereign people, the introduction of any form of control over them would seem controversial in practice and unwarranted in theory.

Consequently , it took a long time for a control of constitutionality to emerge and for statutes to be made to respect the constitution. In fact, the 1958 constitution is really the first to ensure that its provisions are not contravened.

The 1958 constitution seems to break from France's troubled constitutional history: the Fifth Republic has lasted longer than most regimes and more importantly it has fostered constitutional stability and continuity.

The Constitution of the Fifth Republic strengthened de Gaulle's

powers as head of state at the expense of parliament and the judiciary. The Constitution also 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.

Interestingly, the present regime is not modelled on an easily identifiable constitutional system: although the constitution originally established a parliamentary system, the subsequent evolution of the regime bolstered the position of the President of the Republic.

In fact, when writers first wished to classify the present system, they had to coin a new category: the French regime is labelled 'presidentialist' or 'semi-presidential.' This emphasises its mixed character. The hybrid nature of the regime is also revealing when analysed against the historical evolution. The presidential character of the regime, which emphasises the leadership of the President of the Republic, is combined with the main traits of a parliamentary regime.

All three major political traditions – republican, parliamentary and bonapartist, seem to come together in the present Republic.

France's constitutionalism, if to be properly understood needs to be looked at as an ongoing effort by politicians, legislators, and thinkers to formulate a democratic system in tune with the society it aims to serve, and most importantly the rights it oughts to protect.

France stroke an exceptional balance in the formulation of its institutions, bringing together over two centuries of experience.

To quote J. Gicquel, a political commentator: "the Fifth Republic crowns constitutional history by achieving the synthesis of democracy with authority."

Today France's Constitution enounces the following repartition of power:

The 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 Presidents 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.