



The Principles of the French Constitution

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The Principles of the French Constitution

The French Republic has one explicit principle and one only, set forth in the fifth line of article 2 of the Constitution and directly borrowed from Lincoln: "Government of the people, by the people and for the people". But no matter how well expressed and how inspiring, this principle is the one the Republic has espoused, without in fact always showing an equally effective concern for its implementation. But the principle of the Republic is not that of the Constitution, which wisely refrains from reducing itself to a single formula. And it is principles, in the plural, that it expresses, sometimes with a flourish, sometimes discreetly; principles which it enshrines explicitly, or that follow from it implicitly. These principles are, all in all, pretty simple, and it is this very simplicity which makes them akin to the best traditions of European democracy.

*[A Constitution must guarantee rights
It must also provide for the separation of powers
A rationalized parliamentary system
Three major characteristics]*

A Constitution must guarantee rights

First of all, the fundamental rights, those without which no Constitution is worthy of the name. While many countries have chosen to draw up a comprehensive and up-to-date list of these rights, France has preferred to look to its past. The

preamble to the Constitution of 4 October 1958 explicitly refers to two previous texts, to which the French people solemnly proclaim their attachment: the 1789 Declaration of the Rights of Man and the Citizen, and the preamble to the 1946 Constitution.

The first of these two texts has withstood the test of time. Because it is a true charter of individual liberties, it is both imperishable and incomplete: imperishable because nothing can last which is not founded on the inalienable rights of every human being; incomplete because it lacks the dimension of collective rights, the very rights we find a century and half after 1789 - in the preamble to the 1946 Constitution - raised to the same level.

Liberty and equality are enshrined, being both affirmed generally and in some instances spelled out, and enriched, in the light of experience, with the principle of human dignity, reflected and consolidated by economic and social rights, exercised collectively as well as individually.

With the seventeen articles of 1789 and eighteen paragraphs of 1946, France and the French are thus endowed with fundamental rights and freedoms, defined in terms sufficiently precise to afford protection, and sufficiently open to be adapted to developments in collective consciousness and, more prosaically, technical progress: despite the phenomenal transformation of the media, the terms in which freedom of expression was enshrined in 1789 have aged not one whit.

So it remained only to guarantee those rights in all circumstances, or nearly all. That guarantee has been in place since 1971, with the Constitutional Council responsible for ensuring that all laws passed by Parliament are in conformity with these Constitutional texts

The Constitution must also provide for the separation of powers.

But if, as article 16 of the 1789 Declaration says, a Constitution must guarantee rights, it must also, faithful to Montesquieu, organize the separation of powers. And those powers have first to be shaped before they can be distinguished.

The executive has two heads. This is troubling for the foreign observer, as it sometimes is for the French citizen himself, who does not always understand the logic of the relationship between President and Prime Minister.

The President of the Republic, the head of State, is the embodiment of the Nation, its history, unity and integrity. He has important powers, such as the power to appoint the Prime Minister, and then, on the latter's proposal, the other members of the government. He can call a referendum, dissolve the National Assembly, negotiate and ratify treaties, and even take the initiative of proposing a revision of the Constitution. His most important power, however, stems from the

way he is elected: by direct universal suffrage. If a candidate obtains an absolute majority (over half the votes cast), he is immediately elected. Otherwise there is a second round, involving only the two candidates who led in the first. Arithmetically, then, one of the two will necessarily attain an absolute majority.

The fact that over half the voters have voted for him personally gives the head of State an incomparable political power. As the undisputed leader of his political camp, he is actively backed by the government which he appoints and by the parliamentary majority which supports him. Consequently, he can not only wield his own powers, but also resort to those of the government and the Parliament which, out of political solidarity, put them at his disposal.

Nevertheless while the President acts as a spur to the parliamentary majority, it is the Prime Minister who is its day-to-day leader. The regime remains formally parliamentary, in that the government is answerable to the National Assembly which, in principle, has the power to bring it down at any time, just as in the United Kingdom, Germany or Spain, for example.

In these conditions, when the Parliamentary majority belongs to the same camp as the President of the Republic, the Prime Minister is a link between the two. It is he who runs the government and guides the work of Parliament, but the head of State who in fact sets out the main lines of policy, at least on the most important subjects. So it is the President of the Republic who holds the bulk of the executive power and has the lion's share of legislative power at his disposal, albeit indirectly.

All this changes, of course, when the President loses the support of the parliamentary majority.

This situation, which obtained in France from 1986 to 1988, from 1993 to 1995 and between 1997 and 2002, is known as "cohabitation" because it forces a President and a Prime Minister to cohabit at the head of the executive despite being political adversaries who will often be running against each other in the next elections. In this situation the President is limited to the exercise of his own powers, powers which politically he can make little use of immediately after being personally disavowed by the voters in parliamentary elections won by his opponents. It is the Prime Minister, by contrast, who then becomes the country's real political boss.

It is therefore a variable-geometry system. Normally it ensures the primacy of the President, but that primacy is always strictly proportional to his support in Parliament. If the President enjoys the unconditional support of that majority, his primacy is unconditional. If the support is conditional, so is his primacy. And if the support disappears, the primacy disappears with it.

But the most important thing in this strange arrangement is that the variations in question are always decided by the citizens themselves, and by them alone. It is

they who directly choose a President, and they again who, in parliamentary elections, give him or deny him a majority in Parliament. Given that henceforth the head of State is to be elected for the same term - five years - as the National Assembly deputies, French voters will probably find themselves making these two choices at more or less the same time, which logically should take some of the heat out of the electoral calendar. Barring accidents, the French President and National Assembly will in future be elected once and for all for a five-year term.

Turning now to the legislature, we see that it is unequally divided between two chambers, the National Assembly and the Senate.

The National Assembly is elected by direct universal suffrage. The electoral method, similar to that used for presidential elections, produces effective majorities. Each of the 557 deputies is elected in one constituency through a two-ballot majority (first-past-the-post) polling system. This system has constrained the political forces to band together and forge alliances, finally giving birth to two great coalitions. The voters thus always have a choice between the two, the outcome of parliamentary elections generally being a clear winner and a clear loser.

Thanks to this, it is a clearly identified majority which will exercise the essential legislative power and support the government.

It will do so under the watchful eye of the opposition, which though lacking any formal status has come to enjoy many rights. But now, once again, it is the French people themselves to whom the majority will be answerable, since they will have an opportunity to judge it at the next election, if necessary punishing it with defeat, an opportunity they have never failed to grasp for over twenty years.

The Senate is in a different position. While the deputies represent the people, the 321 senators represent France's local authorities, both in metropolitan France and overseas (as well as French nationals residing abroad). They are in fact elected, by indirect universal suffrage, by locally elected representatives. They serve a nine-year term, and the Senate, one third of which is up for re-election every three years, cannot be dissolved. Conversely, the government is not answerable to the Senate, which cannot bring it down.

In the exercise of legislative power, it has a priori the same powers as the Assembly, but this two-chamber system becomes inequitable in that, if a disagreement should persist between the two chambers, the government can ask the deputies to make a definitive ruling. So it is the Assembly which has the last word (except in the case of an amendment to the Constitution, or an institutional act of concern to the Senate). Because of the particular way it is elected, the second chamber serves as a stronghold of the conservative forces in France and guarantees a majority for the corresponding coalition in all circumstances.

A rationalized parliamentarianism

In the relations between government and Parliament, the former has many ways of forcing the latter to take decisions. This is what has been called "rationalized parliamentarianism", thanks to which the executive is always able to confront the legislature with its responsibilities and, thus, not to allow it to shirk them. Political solidarity does the rest, which thus ensures the existence of a majoritarian discipline without which no country is governable in the long term.

The members of Parliament sometimes feel uncomfortable about this, considering themselves too much constrained by their duty of loyalty to the government. But this feeling is certainly not peculiar to France, and a comparable regret may be observed, varying only in its keenness, in all similar assemblies. The Constitution has brought into being another body, this one not belonging to Parliament. This is the Economic and Social Council, which brings together what in France are usually called the "living forces of the Nation", i.e. prominent people in civil society, the voluntary sector, trade unions and employers' associations. Its powers are consultative only.

The third branch of government, the judiciary, is not really a power in its own right, since the Constitution defines it in more restrictive terms as the "judicial authority". Traditionally, the French judge is conceived as a mere "mouthpiece of the law". The judge's duty is strictly to interpret and apply the law, since he has no power to depart from it and is not himself recognized as a real creator of law. The Constitution guarantees his independence, and a special status effectively offers members of the French judicial service wishing to make use of them the means of total independence.

Again by tradition, France has in a sense a dual judicial system, with two parallel but separate hierarchies: the civil and criminal courts, headed by the Court of Cassation and the administrative courts which are empowered to hear all disputes between the authorities and private individuals, headed by the *Conseil d'Etat*. There is also the *Cour des comptes* (Auditor-General's Department or Audit Court), with important responsibilities in the budgetary and financial sphere. But it was a break with French tradition when, in 1958, the present Constitution created the **Constitutional Council**. This body, composed of nine members, three appointed by the President of the Republic, three by the President of the Senate and three by the President of the National Assembly, is responsible for ensuring the proper conduct of presidential elections, referenda, and parliamentary elections. But its essential - and most innovative - role is to monitor constitutionality, making sure the laws are in conformity with the Constitution.

Not anyone may apply to this body for a ruling, but since 1974 the parliamentary opposition has had the right to refer to it any statute adopted by Parliament. Consequently, the Constitutional Council is frequently mobilized in this way, and frequently, too, sets aside provisions adopted by Parliament as contrary to the

Constitution. The result is that there is a strict limit - that of respect for the Constitution - placed on the majority power jointly exercised by government and Parliament.

Although, a priori, the way its members are appointed holds out no serious guarantee of autonomy, to the point where its composition might be thought outlandish, the status of its members, appointed for nine years, who may not be removed and are ineligible for re-appointment, does give them the means to act independently, and the way the institution has evolved has made them want to use those means, so much so that the Council has progressively won public respect, thanks to which it is able to impose its authority in the peaceful resolution of numerous political or judicial disputes.

Within the international system, finally, France formally recognizes the rules of international public law, which should certainly be the least she could do as a permanent member of the United Nations Security Council. On the European level, since 1992 the French Constitution has included articles (88-1 to 88-4) legalizing France's participation in the European Communities and European Union and the sharing of sovereignty to which it has given rise, while at the same time limiting it for the future, since any further transfer of essential elements of sovereignty must be authorized in advance by a revision of the Constitution.

That revision, like any other, can in any event be decided upon only if both the National Assembly and Senate separately give their consent. Once this first step has been taken, there may be a choice, before any reform is definitively ratified, between a national referendum and, the simpler procedure of adoption by a three-fifths majority of both chambers meeting together in Congress.

As regards length, the Constitution is very short since it has only 88 articles (plus those of 1789 and 1946).

Three major characteristics

Basically, it guarantees the functioning of a system which has three major characteristics: the governed choose the governors, since the outcome of an election leads directly and immediately to the handing over of power to the winner(s); the governors have the means of governing, since rationalized parliamentarianism ensures the stability and power of the majority bloc; and the governors are effectively answerable to the governed, since the latter always have an alternative solution, at the next election, if they are dissatisfied with the outgoing majority.

Thus summarized, the principles of the Constitution bring it much closer than one might think to systems operating in countries as different as Portugal, Sweden,

Spain, Germany and even Britain. Beyond what are only superficial differences, these fundamental elements are present in all these countries' systems.

All that remains is to point to the solidity of the rule of law and effective guarantee of freedoms, and to conclude that what we have here really is a modern democracy.

For further information:

See the legislation relating to the Constitution at: www.legifrance.gouv.fr