

# THE GOVERNMENT OF FRANCE

## CHAPTER I

### The French Political Tradition

#### Democratic and Authoritarian Tendencies

French citizens created the Fourth Republic in 1946. They built it out of the ruins of the War and the ravages of four years of the German occupation of the Second World War. The fact that it is a Fifth Republic suggests that there had existed other governmental systems than that which prevails at present. During the century and a half following the French Revolution, France experienced three further revolutions,<sup>1</sup> two *coups d'etat*<sup>2</sup>, and three wars.<sup>3</sup> She adopted and rejected, during this period, more than a dozen constitutions,<sup>4</sup> three of them monarchic, two dictatorial, three imperial and four republicans. Besides these constitutional experiments, for a number of years she was governed by provisional systems, not based on any written text as the *Comite de salut public*, the provisional government of 1848, and the government of National Defence of 1870. "Each time a constitution was made," remarks Herman Finer, "large elements of the nation were resolved never to make it work, or to work within it, but to destroy and replace it by another that must equally outrage rival millions of the population."<sup>5</sup>

Several times, thus, in between the history of the four republics France has passed through many phases and tried many experiments. Among the countries in which popular government has prevailed France, according to James Bryce, is in two respects unique. "She adopted democracy by a swift and sudden stroke, without the long and gradual preparation through which the United States and Switzerland and

England passed, springing almost at one bound out of absolute monarchy into the complete equality of all citizens." And France did this not merely because "the rule of the people was deemed the completest remedy for pressing evils, not because other kinds of government had been tried and wanting, but also in defence of general and abstract principles which were taken for self-evident truths."<sup>6</sup> The democratic and authoritarian tendencies in France, therefore, form an indispensable background for the proper appreciation of the present political system there. No country can rid itself of its past, but past in France most conspicuously runs in the present and may go deep in the future as well.

#### Heritage of the Revolution

The "old Regime from which France extricated herself during the last decade of the eighteenth century was marked by the Declaration of the Rights of Man. Men, it was affirmed, were born free and remained free and equal in rights; the aim of all political associations was the preservation of the natural and imperceptible rights of man, namely, liberty, property, security and resistance to oppression. The Declaration of the Rights of Man was founded on the ideas of Voltaire, Montesquieu and Rousseau and the same declaration was made a part of the preambles of the Constitutions of Fourth and Fifth Republics.

During the next decade France experimented with four Constitutions. The Constitution of 1791 was the result of the labours of the National Assembly and it attempted to carry out the ideas which brought about the French

1. In 1830, 1848 and 1870.

2. In 1799 and 1851.

3. In 1793, 1870 and 1914.

4. One of them, the *acte additionel*, lasted only for twenty-one days.

5. Finer, Herman, *Government of Greater European Powers*, p. 272.

6. Bryce, J., *Modern Democracies*, Vol. II, p. 232.



Revolution. The Revolution which had started in 1789 as an attempt to reform ended in 1792 and 1793 by abolishing of the monarchy and executing the King.

The Convention was summoned by the extreme radicals and it prepared another Constitution to replace the Constitution of 1791. It established a collegiate executive composed of 24 men and established a legislative assembly on a broader popular basis. The draft Constitution could never be put into effect as a result of political circumstances and remained a dead letter. The Convention, then, set up another Constitution in 1795, the system of Directory.

The Constitution of 1795 established a plural executive or Directory, as it was called, composed of five members chosen by the legislature. It provided a bicameral legislature chosen by voters with property qualifications. The Directory failed to distinguish itself. Its members were men of mediocre ability and were divided amongst themselves and they failed to control the situation. Anarchy again threatened the country and the Directory was replaced in 1799 by a Consulate, a system which derived its name from the fact that the executive authority was vested in the three consuls. Napoleon Bonaparte was the first consul.

The Constitution of 1799 was strictly authoritarian and its machinery was placed under the exacting control of the First Consul, Napoleon Bonaparte. He did not believe in the popular constitutions. To all intents and purposes, France had again become a monarchy and in 1804 Napoleon proclaimed himself Emperor of France and made the office hereditary in his family.

Napoleon abdicated in 1814 and in terms of the agreement with the victorious allied powers the Bourbons were restored to the throne in the person of Louis XVII. Louis was pledged to advance a limited monarchy patterned somewhat close to that of England. But the Frenchmen soon discovered that it was far easier to transplant the form than the spirit of the government. The monarchs, too, had never caught the spirit of the Constitution which they had sworn to uphold. Charles X violated certain provisions of the Constitution and, thus, the "July Revolution" of 1830. Charles X had to abdicate and France, once again, was faced with the problem of providing herself with a new government.

Most Frenchmen believed that the mon-

arch was at fault and not the monarchy and, therefore, changed the line of Kings. Louis Philippe, of the House of Orleans, was put on the throne on a clear understanding that he would be a strict constitutional ruler. But the royal ineptness and partisan squabbles, owing to the multiplicity of political parties, made the parliamentary system unworkable. Gradually, the system of government lost all support and the sentiment in favour of a republic grew apace. Paris was once more flamed into revolution and on February 24, 1848 Louis Philippe abdicated and quitted the country. A provisional government was set up on May 4, 1848 and France was proclaimed a republic, known in history as the Second Republic.

The Constitution of the Second Republic was based on the American type of Presidency. But the people were in no mood to accept the new type of government. When the first National Assembly was elected, two-thirds of its members turned out to be avowed monarchists. On December 2, 1848 the French people went to the polls and, by overwhelming majority elected Louis Napoleon, nephew of Napoleon I, the first President of the Republic. Louis Napoleon was himself certainly no republican. He began manoeuvring and after three years in office, staged a *coup d'etat* and gave the country a new Constitution. On November 7, 1852 the Senate decreed the re-establishment of the Empire. It was submitted to the people for their approval and they gave an affirmative vote. The imperial power became as fully centralised under Napoleon III as it had been in the days preceding Waterloo, though some important changes were made in the plan of government.

For a decade things went reasonably well. In time, however, the original popularity of the Emperor was on the wane. Anticipating bad times, he initiated a number of reforms and a new Constitution of the Second Empire was drafted on May 21, 1870. But on July 19, the Emperor plunged the country in a hasty and ill-conceived war against Prussia. At the disastrous battle of Sedan Napoleon surrendered. He was subsequently released by his German captors and went to England where he died in 1875.

The period of 1870 to 1875, says Neumann, "not only gave rise to the Third Republic but also created the foundations of the Fourth, its nearly identical successor." The Government created in 1875, after experimenting with various make-shift arrangements, was



a Parliamentary Republic. It was nominally headed by the President of the Republic elected by majority of both Houses of the legislature for a term of seven years with eligibility for re-election. The President was seemingly equipped with vast powers, but the actual leadership of the government was in the hands of the Prime Minister, officially known as the President of the Council of Ministers. The role of the two "presidents" was the same under the Third Republic as it was under the Fourth, but not under the Fifth.

The legislature was bicameral. The Upper Chamber, the Senate, had 300 members indirectly elected by electoral colleges formed in each department. A tenure of nine years, one-third retiring every three years, and a minimum age of forty years were prescribed for Senators. The Chamber of Deputies, the Lower Chamber, was directly elected by universal suffrage, although women did not possess the right to vote, for a period of four years. In theory, it could be dissolved by the President of the Republic with the consent of the Senate, but since 1877 no attempt was made to dissolve it. The lack of dissolution proved a distressing feature of French politics; the short life of French Cabinet. There was no provision for resolving a deadlock between the two chambers and it placed the Senate in an advantageous position.

#### Vichy Interlude

The Third Republic did not live through World War II. It collapsed after eight weeks of fighting in 1940. The war time Premier, Paul Renaud, resigned and he was succeeded by Marshal Petain, a hero of World War I. Negotiations were promptly opened for an armistice. According to the terms of the armistice France was divided into an occupied and unoccupied zone. The French Government in Vichy, though in unoccupied zone, was in no way free from German influence.

The National Assembly in a joint session of the two chambers, which met to ratify the armistice, "voted all power to the Government of the Republic under the authority and signature of Marshal Petain," who was also authorised to frame a new constitution. Petain never promulgated a new constitution, but on the day after the National Assembly had given him full powers, he promulgated two Constitutional Acts. The first made him the chief of the State to serve indefinitely. The second Act essentially

set up a dictatorship; making laws and to control the budget. He was also vested with emergency powers. As to the existence of emergency, Petain was the sole judge. It was, thus, at Vichy, under the guidance of Marshal Petain, that the Third Republic was finally killed.

#### The Provisional Government, 1944-45

The Vichy Government and the simultaneous occupation, first of part and then of all the country met with vigorous opposition, which came to be known as Resistance, from several groups at various points in the country. In 1943, a National Council of Resistance was formed together with "the government in exile" which General De Gaulle had formed in London. With the liberation of France by the Allied troops, De Gaulle entered Paris on August 20, 1944 and shortly after as President of the provisional government formed his ministry known as Commissioners.

The first act of De Gaulle when he entered Paris was to issue a decree declaring the Vichy legislation null and void. In pursuance of this declaration the first national elections came on 21 October 1945, when the French people were called to elect a representative Constituent Assembly. In part, the election took the form of a referendum, in part, it was to designate the members of the Assembly. The first part included two questions: "(1) Do you wish that the Assembly to be elected at this time should be a Constituent Assembly?; (2) Do you approve of the public powers being organised, until the establishment of the new constitution, in conformity with the bill, the text of which was given on the other side of the ballot?" If the electorate answered "yes" to the first question, it meant the election of the Constituent Assembly empowered to draw up a new constitution replacing one of the Third Republic. In case of a negative decision the members elected would constitute a Chamber of Deputies under the Third Republic and performed its functions accordingly.

The Voters repudiated by an overwhelming majority the Constitution of the Third Republic and indicated their desire for an entirely new constitution. The Drafting Committee of the Assembly set to work without delay on the constitution. The Drafting Committee submitted the new constitution to the Assembly on April 19, 1946. Its main features were a single



legislative Chamber, the Chamber was to elect the President of the Republic for a term of six years and he was not to serve for more than two terms; the powers and functions of the President in general, were less extensive than that of the President under the Third Republic; the Prime Minister was to be elected by the Assembly and he would form his own Council of Ministers responsible to the Assembly. The draft also contained a formidable array of rights-civil, economic and social.

The Assembly approved the Draft Constitution by a Communist-Socialist majority in spite of the determined opposition of the other moderate parties. When the Draft Constitution was submitted to a referendum for approval, it was rejected. The defeat of the Draft reflected the fear that the Communists would seize power through the all powerful unicameral legislature on which they had particularly insisted in the Constituent Assembly.

The Second Constituent Assembly was elected on June 2, 1946. The Assembly was able to produce a final draft within four months of its composition. On October 13, 1946, the people adopted the new constitution.

#### The Fourth Republic

The Constitution of the Fourth Republic came into effect on Christmas eve 1946. Commenting upon the nature of the new Constitution, Munro remarked: "What ultimately emerged from the Constituent Assembly in October 1946, was a considerably diluted form of parliamentary government, with some hitherto untried features—a rather curious political mosaic with some provisions which are by no means certain to prove workable. In its essential features, notably the provision of a cabinet responsible to the Assembly but normally without the power to procure a dissolution, it is astonishingly similar to that of the repudiated Third Republic."

The Fourth Republic inherited all those problems which the Third Republic was powerless to solve. Ministries in France had risen and fallen almost as rapidly since 1946 as before. Prime Ministers came and went with disturbing frequency as the majorities shifted back and forth in the Assembly. The twelve years of the Fourth Republic saw 20 cabinets, an average of one every seven months.

#### The French Political Tradition

France is a classic land of revolutions and a continued revolutionary tradition is the major contribution of the French people to politics, from the bourgeois-democratic revolution of 1789, the second popular, liberal-democratic revolution of 1848, to the Paris Commune of 1871 and the New Left uprising of 1968. The central message of the French Revolution of 1789 that one may discern in the origins, evolution and effects of the violent annihilation of the *ancien regime* was a crucial step of France on the long road toward democracy. Marx says: "The centralized State power with its ubiquitous organs of standing army, police, bureaucracy, clergy and judicature—organs wrought after the plan of a systematic and hierarchic divisions of labour—originates from the days of absolute monarchy..... Still, its development remained clogged by all manners—medieval rubbish, seignorial rights, local privileges, municipal and guild monopolies and provincial constitutions. The gigantic broom of the French Revolution..... swept away all of these relics of bygone times, thus clearing simultaneously the social soil of its last hindrances to the superstructure of the modern state edifice raised under the First Empire, itself the offspring of the coalition wars of old semi-feudal Europe against modern France."<sup>7</sup>

It is necessary to emphasize that the revolutionary violence was crucial for France's advance, where the obstacles democracy faced were different from those in England. French society did not "generate a parliament of landlords with bourgeois overtones, in the English manner. Previous trends in France had made the upper classes into an enemy of liberal democracy, not part of democracy's entering wedge. Hence, if democracy were to triumph in France, certain institutions would have to be gotten out of the way.... for this very reason, the Revolution was all the more decisive."<sup>8</sup>

Under absolute monarchy, the French landowners adapted to the generally gradual intrusion of capitalism by putting greater pressure on the peasants but left them in a condition of *de facto* ownership. Till the mid-eighteenth century the crown was the main agency of modernisation in France. This process brought about a fusion between nobility and bourgeoisie

7. Quoted in Theda Skocpol, *States and Social Revolutions*, (Cambridge University Press, 1984), p. 174.

8. Barrington Moore Jr., *Social Origins of Dictatorship and Democracy*, (Penguin University Books, 1973).



quite different from that in England. This resulted in the "feudalisation" of a large section of the French bourgeoisie while sections of the English feudalists, through the law of primogeniture, were forced to adopt bourgeois ways of living. Without the Revolution, the ongoing feudalisation of the French middle class would have forced the French monarchy to carry out a form of conservative modernisation from above, similar in its main outlines to what happened in Germany and Japan.

But the Revolution did prevent this conservative, antidemocratic outcome for France. When the French bourgeoisie consummated its political revolution in 1789, it had not yet seized the commanding heights of economic power. In fact, the bourgeois class rose to state power by climbing on the backs of radical movements within the urban artisans and workers. These radical forces prevented the revolution from turning backward. The rich and middle peasants took advantage of the situation to force the dismantling of the seigneurial system, which was the main achievement of the Revolution.

The radical revolution was an integral part of the revolution on behalf of private property and the rights of man. The anticapitalist elements in the *sans-culottes* revolution and the protest of poor peasants were a reaction to hardship resulting from capitalist features of the prevailing economy. The radicals, however, cannot be regarded as an excrescence on the liberal and bourgeois revolution. The one was impossible without the other. The democratic revolution would not have gone as far as it did without pressure from the radicals. In short, Barrington Moore points out, "it is very difficult to deny that if France were to enter the modern world through the democratic door she had to pass through the fires of the Revolution, including its violent and radical aspects."<sup>9</sup>

Political scientists point to the gashes left by the French Revolution as a major cause of the instability of French political institutions. Nevertheless, it is true that social transformation brought by the Revolution was ultimately favourable to the development of parliamentary democracy in France. By destroying monarchy, landed aristocracy and feudal rights, it sanctified the right of bourgeois property and equality before the law. "To deny that the

predominant thrust and chief consequences of the Revolution were bourgeois and capitalist is to engage in a trivial quibble.... Put this way, the thesis [of bourgeois revolution] overemphasises the independent influence of such interests."<sup>10</sup>

During the restoration, a Bourbon King reigned from 1815 to 1830. The failure to share regal power with *haute-bourgeoise* proved its undoing and the main cause of the revolution of 1830. At this point the old aristocracy vanished from the political arena as an effective social force. The Revolution of 1848, the establishment of the second republic and later the rule of Napoleon III paved the way for unquestionable ascendancy of the industrial and financial bourgeoisie in France. The war with Bismarck's Germany resulted in the defeat of Louis Bonaparte, the rise of the Paris Commune, signifying the formation of first Workers' Republic in 1871, and finally the establishment of the Third Republic in 1875. Despite the succession of several constitutions in France, two empires and five republics, the steady development of parliamentary democracy was never halted by any counter-revolution.

France has been consistently, for the most part of its post-Revolutionary history from 1789 to the present day, an authentic capitalist democracy. But France also has been a land where different schools of socialism, from utopianism of Fourierists and Saint-Simonians to revolutionary syndicalism and Marxism have flourished. The Communist and Socialist Parties have been two major political formations of the working class, the peasantry and the radical intelligentsia during the twentieth century. The workers and other oppressed strata have played a significant role in democratic revolutions of 1789, 1830 and 1848. The Paris Commune of 1871, antifascist struggles from 1936 to 1945, trade union struggles in general, and May-June mass movement of 1968 in particular against Charles de Gaulle.

It is this working class radicalism both in thought and action, which distinguishes the French political tradition from American and British conservatism. The explosion of May-June, 1968, was largely the expression of the accumulated discontent of the French people after ten years of de Gaulle's rule. Half a million

9. Ibid., p. 105.

10. Ibid., pp. 105-106.



workers had lost jobs; their wages were frozen by the government and the big corporations while prices and profits were soaring. Even the students in university campuses were rebellious. Police brutality against them on 10th May sparked off "the wave of protests that swept over France, culminating in the great strike of nine million workers and the massive factory occupations which tied up the whole country for several weeks."<sup>11</sup>

Waldeck Rochet, the general secretary of the French Communist Party, declared that the people "are fed up with being subjects. They want to be citizens."<sup>12</sup> For ten years the French working-class had struggled against de Gaulle's procapitalist policies through strikes and mass campaigns through the General Confederation of Labour led by the Communist Party. When de Gaulle came to power in 1958, he secured 80% of the votes in the referendum for his Bonapartist Constitution. The Communist Party was the only party calling for its rejection and 20% voted against it. It was the Communist Party which had fought against de Gaulle's regime of personal dictatorship single-handed for the last ten years.

The increased support for Communist Party, especially among the workers, many towns and regions, enabled it to elect some 30,000 Communist councillors and bring about a larger political unity of all left wing parties. The Left Bloc obtained 45% votes against de

Gaulle's 55% in 1965 presidential election and 47% votes against 53% for the Gaullists in the 1968 parliamentary election. That is why when the Communist Party and the CGT, along with other trade unions called for mass demonstrations and general strike on 13th May, in solidarity with the students, 800,000 marched in Paris, 60,000 in Lyons, 50,000 in Toulouse, Marseilles and Bordeaux, and 30,000 in Mans, and nine million joined the general strike throughout France. Contrary to hopes aroused by the nation-wide mass movement, "the balance of class forces made it impossible to put on the order of the day the instant establishment of socialist power. On the other hand, it was possible to oust the Gaullist power.... opening the path to socialism. What was lacking for putting this very real possibility into practice was unity of the workers and the democratic forces."<sup>13</sup>

After the disintegration of the Soviet Union and fall of the Communist system, the French Communist Party not only lost its electoral influence but also changed its ideology embracing the programme of democratic socialism. The French political system today is based on co-existence of a right-wing conservative party and a reform-oriented socialist party who share power between themselves as President and Prime Minister or function as formal rivals as a party of government and that of opposition.

#### SUGGESTED READINGS

Alfred Coblan : *The Social Interpretation of the French Revolution*.

Barrington Moore Jr : *Social Origins of Dictatorship*.

Georges Lefebvre : *The French Revolution*, 2 Vols.

Theda Sakocpol : *States and Social Revolutions*.

P. Abril : *Politics in France*.

D.W. Brogan : *The Development of Modern France*.

11. Jack Woddis, *New Theories of Revolution*, International Publishers, New York, 1974), p.348.

12. Quoted in *Ibid.*, p. 349.

13. *Ibid.*, p.105.



## The Fifth Republic

### THE NATURE OF THE CONSTITUTION

#### Fall of the Fourth Republic

A story has often been told how a French book-seller when asked on one occasion for a copy of the French Constitution, replied that he did not deal in periodical literature. "This anecdote," remarks Gooch, 'embodies a reference to an important formal fact in French political history and, at the same time, indicates a prevalent attitude toward that fact.' On June 1, 1958, the Fourth Republic came to an end. The change came about somewhat abruptly with a marked element of melodrama at the final stage. The Government was unable to meet the challenges of the time especially the Algerian crisis. In May 1958 President Rene Coty unequivocally and firmly told the National Assembly that he would resign if a government led by General De Gaulle was not formed. The National Assembly submitted reluctantly, but the Assembly signed its own death warrant when it adjourned and handed over its law-making power to General De Gaulle's Government for six months. When the Deputies had agreed without argument to disperse until October, M. Andre Marlaux, the General's Minister for Information, remarked, "now one may be able to govern." With no party and no programme, General De Gaulle had obtained dictatorial powers previously accorded by the French Parliament only to Marshal Petain under the menace of German tanks. De Gaulle promised that at the end of six months "order will have been re-established in the State, hope re-found in Algeria and union re-made in the nation, thus permitting the public powers to resume their normal functioning."

Among the powers that French Parliament had delegated to De Gaulle's Government was constitution-making. The General had categorically told the National Assembly that if he was not provided with the mandate and the means of reforming the Constitution, he would resign at once and retire again into private life. "My Government has been formed," he told the Assembly, "for the explicit purpose of making these changes. I have the impression

that in voting for my investiture you indicated that you wanted these changes....If you cannot agree on the Bill submitted to you I imagine it will be up to some other government than my own to try, after so many other governments have tried in vain.

There was no other alternative but to submit to De Gaulle's challenge and accept his terms. The Reform Bill, proposed by the General, was approved by the National Assembly by 350 votes to 163. It sought to take away the existing power from the Assembly to change the Constitution and invest in the government the power to submit proposed constitutional changes directly to the electorate by referendum without going through Parliament. It also provided for a consultative committee of parliamentarians whose advice would be sought in drawing up the terms of the proposed reform, but without binding the government to accept their advice. The Universal Suffrage Commission had proposed to eliminate the consultative committee and to make it compulsory for the government to submit its reform proposals to the vote of Parliament, while nevertheless allowing the government subsequently to put its constitutional reform proposals to the people in any form it liked, even if the parliamentary vote was unfavourable. But General De Gaulle wasted no time in telling the Assembly that this would not do and unless the Deputies adopted the Bill as submitted to them, he would resign. "The attitude of this Assembly's Universal Suffrage Commission," he said, "is in plain contradiction with the objects for which the Government was formed." He said that it was obvious that if the government were to submit the constitutional reform to the National Assembly before it was submitted to the nation by referendum, it would start a new constitutional debate and all precedents in France had shown that these debates could not get anywhere. "It was impossible to foresee the atmosphere three months hence in which such a debate would take place," he added.

#### The Proposed Constitutional Reform

What constitutional reforms General De



Gaule proposed to bring about could be predicated to a great extent. As President of the Provisional Government after the War, De Gaulle believed that France would never be an effective force in the world unless its political structure was overhauled. He called for a regime in which political power should not depend on the vagaries of party politics." He pleaded for a constitution which provided for a strong central government with a president elected by the nation and invested with authority to act much on the lines of the United States system. Parliament should pass the legislation and supervise the government, but the president should appoint ministers, promulgate laws, issue decrees and preside at cabinet meetings. The instability and weakness of successive governments in post-war France—26 of them—had hardened the General's belief to give France a stable government, which multiple parties had hitherto denied it. On the eve of the recess of the National Assembly, the General told the Deputies that he dearly loved the republican institutions and that the Assembly elected by universal suffrage "would remain the principal Assembly in tomorrow's Parliament." This statement gave immense relief to those who had believed that De Gaulle would repudiate the French democratic tradition and set up an authoritarian regime. But the General's statement also emphasised that the dependence of the executive upon the legislature would be reduced through various means and to the minimum. If the new system of government was to be parliamentary, it would just be a semblance of it. Anyway, the new constitutional reforms were intended to end the Fourth Republic.

De Gaulle had opposed the Constitution of the Fourth Republic from the very start. He resigned the Premiership and retired from politics before the Constitution came into force. It was only natural that on his return to power 12 years later he should have refused to accept institutions that he had already considered deplorable. "Besides by that time, many other Frenchmen, too, had come to treat the Constitution as the scapegoat for the failings of the Fourth Republic."<sup>1</sup>

The Constitution of the Fifth Republic emerged out of the Enabling Act of June 3, 1958, in which the National Assembly provided, by the requisite majority of the three-

fifths, that the Constitution "will be revised by the government formed on June 1, 1958,"<sup>2</sup> that is, General De Gaulle's Government. The draft was first drawn up by a small Cabinet Committee, headed by the Minister of Justice and later Prime Minister, Michel Debre. General De Gaulle himself was not a member of this Committee. But there is little doubt that the Committee had always kept in view the General's constitutional theories, particularly his emphasis on the need of a strong President. The most important landmark was the speech made by General De Gaulle at Bayeux on June 16, 1946, wherein he outlined the ideas that were to serve as the foundations of the new constitution. "The rivalry of parties," he said, "in our country, is a fundamental character, which leaves everything in doubt and which very often wrecks its superior interest. This is an obvious fact that ...our institutions must take into consideration in order preserve our respect for laws, the cohesion of governments, the efficiency of the administration and the prestige and authority of the State. The difficulties of the State result on the inevitable inalienation of the citizen from his institutions.....All that is needed then is an occasion for the appearance of the menace of dictatorship." To avoid this menace, De Gaulle outlined that following institutional changes:

1. The legislature, executive and judiciary must be clearly separated and balanced.
2. Over and above political contingencies there must be a national 'mediation' (arbitrage).
3. The voting of the laws and the budget belonged to the Assembly elected by direct and universal suffrage.
4. A second Assembly elected in a different manner, was needed to examine carefully the decisions taken by the first, to suggest amendments and proposed bills.
5. The Executive power should not emanate from Parliament. Otherwise the cohesion and authority of the government would suffer, the balance between the two powers vitiated, and the members of the executive would be merely agents of the political parties.
6. A President of the Republic (chief d'

1. Dorothy Pickles, *The Fifth French Republic*, p. 14.

2. For a detailed study refer to Macridis, Ray, and Brown Bernard, *The De Gaulle's Republic: Quest for Unity*, Chap. X.



Etat), embodying the executive power above political parties, should be elected by a college, which included the Parliament, but is much broader than Parliament.....to direct and work the policy of the government, promulgate the laws and issue decrees, preside over the meetings of the Council of Ministers; serve as mediator above the political contingencies; invite the country to express its sovereign decisions in an election, be the custodian of national independence and treaties made by France and appoint a Prime Minister in accord with the political orientation of Parliament and the national interest."<sup>3</sup>

The Cabinet Committee prepared the Draft of the constitution in two months. The Draft was considered by the Constitutional Consultative Committee consisting of 39 members; 26 representatives of the National Assembly and the Council of the Republic, and 13 members of the Government. The Consultative Committee endorsed the new text of the constitution after suggesting minor modifications which the Government accepted. It was submitted to the people at a referendum held on September 28, 1958. France gave a triumphal vote of confidence to General De Gaulle and the constitution was ratified by a majority of 79.25 per cent votes.

### SALIENT FEATURES OF THE CONSTITUTION

#### Reconstruction of Power

The Constitution of the Fifth Republic, though framed within a short period of time under the stress and strains of the Algerian war, introduced prominently the revisionist ideas that General De Gaulle had uttered and sternly advocated. Two major themes constitute the hub of the entire framework of the Constitution: first, the reconstitution of the authority of the State under the leadership of a strong executive, and, second, the establishment of a 'rationalized' Parliament, that is, Parliament with limited political and legislative powers. The new Constitution established a parliamentary system, in accordance with the undertaking given by General De Gaulle's government on taking office to preserve Republican traditions,

but in which Parliament was no longer in a position to dominate the Executive as it did in the period of the preceding Republics. Michael Debre, the Chairman of the Cabinet Committee, which drafted the Constitution, and later became the Prime Minister, himself pointed out that the "objects of constitutional reform was to reconstruct State power." Thus, the crucial task of the constitution makers was to create a strong and stable government to succeed a Parliamentary system that could not produce stable majorities. The perennial dilemma of the French body politic had been multipartism, always shifting loyalties and manoeuvring for power.

#### Republican Traditions

The new Constitution respects the French Republican traditions. The Preamble solemnly affirms the attachment of the French people to the Declarations of the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and completed by the Preamble of the Constitution of 1946. Article 2 of the Constitution proclaims that "France is a Republic, indivisible, secular, democratic, and social." It ensures the rights of all citizens and respect for all beliefs. The national emblem remains the blue, white and red tricolour flag and the national anthem is the *Marseillaise*.<sup>4</sup> The motto of the Republic is liberty, equality and fraternity. The government is that of the people, by the people and for the people. Article 3 affirms all sovereignty stems from the people. But this sovereignty is not to be exercised solely through the representatives of the people but also through referendum. The suffrage may be direct or indirect, but always "universal, equal and secret." Respect for political parties is reiterated in Article 4, where, however, it is stated that the parties "must respect the principles of national sovereignty and democracy." Many thought that this provision was aimed at the Communist Party, which had become powerful.

#### Constitution the Result of Compromise

The Constitution of the Fifth Republic is a compromise, an expression of two very different and probably conflicting principles. The first is the modified version of the traditional Parliamentary system and the second is the introduction of a strong President who would em-

3. As cited in Roy C. Macridis and Robert E. Ward (Eds.), *Modern Political systems: Europe*, p. 52.

4. The French Revolutionary hymn composed by Roubert de Lisle in 1792, sung by volunteers of Marseilles as they entered Paris, 30th July.



body the legitimacy of the nation, and could, in an emergency, prevent the disruption of the political system. There are the familiar organs of Parliamentary system, a politically irresponsible head of the State as distinct from the head of government; the Prime Minister appoints and dismisses his colleagues and he directs the policies of the government and is responsible to the lower Chamber of Parliament, the National assembly; the National Assembly has the right to censure and overthrow the Cabinet and the Prime Minister; the two Houses of Parliament are democratically elected; and the Judiciary is independent.

At the same time, the Constitution delegates broad powers to the Chief of the State, the President, and places serious limitations on Parliament. There is a new principle, the rule of incompatibility which makes parliamentary seat and a ministerial post incompatible to each other. This rule requires that a member of Parliament who becomes a Minister must quit his parliamentary seat and is replaced by the "substitute" who runs at the same ticket at the legislative election. The legislative and the executive powers are thus separated and this is clearly the negation of the Parliamentary system where the Cabinet is a hyphen that joins, a buckle that fastens the Executive and Legislative departments.

Thus, the Constitution of 1958 was the result of a compromise between the "republicans" belonging to the political parties of the Fourth Republic, generally in agreement about the case for some measure of change which would increase the stability and effectiveness of the executive, and De Gaulle and his followers, who wanted essentially to enhance the role of the President. In delegating its constituent powers to De Gaulle's Government on June 3, 1958, the National Assembly refused to let the new head of the government establish a Presidency on the American model. Perhaps, somewhat surprisingly, De Gaulle accepted this limitation to his freedom to shape the Constitution. The 1958 Constitution, accordingly, deems the President an "arbiter" not a "leader" or "guide." Article 5 of the Constitu-

tion reads, "The President of the Republic shall see that the Constitution is respected. He shall ensure, by his arbitration, the regular functioning of the governmental authorities, as well as the continuance of the State. He shall be the guarantor of national independence, of the integrity of the territory, and treaties." Admittedly, arbitration, remark Jean Blondel and Drexel Godfrey, "is an ambiguous concept; one could vary the interpretation from the idea of a more positive role (clearly De Gaulle's view) to that of a neutral function (clearly the "correct" interpretation of the law of the Constitution)."<sup>5</sup>

With so many compromises in principles, it is not surprising that the Constitution should have been ambiguous in part and that efforts should have been made to modify both the letter and the spirit of the law. De Gaulle was the holder of the power and occupant of the Presidential office for near about two terms and from the inception of the Constitution,<sup>6</sup> he had constantly made efforts to mould and remould "the original text in the direction he thought best, and he has been helped by circumstances." The Algerian war and the strain on the morale of the army led to various covert and overt attempts at overthrowing the Government were sufficient to endow the President with emergency powers and Article 16 of the Constitution provides for such powers. The President established the weight of his stewardship of the State at the time of the Algerian crisis. De Gaulle also benefited from the hitherto unprecedented fact of having the support of a majority of Deputies in the National Assembly belonging to his own Party which was disciplined and solidly behind him.<sup>7</sup> He, therefore, intervened in a number of matters which were not clearly within the province of the President according to the Constitution. With Michel Debre as his first Prime Minister, the President did not find any difficulty in over-stepping the bounds set by the Constitution in the exercise of constitutional powers. His move for a change in the election of the President, from indirect to direct, and the first election of the President by universal suffrage, in December 1965, vindi-

5. Jean Blondel and E. Drexel Godfrey, *The Government of France*, p. 33.

6. 1958 to 1965 and 1965 to 1969. He resigned as a result of unfavourable verdict at the referendum in April 1969 on the reorganisation of the Senate and regional reforms.

7. The Gaullist Party, the U.N.R., was the largest party at the First General election of the Fifth Republic in 1958 and it obtained almost an overall majority at the subsequent election in 1962 after De Gaulle had dissolved the National Assembly when it overthrew the Government by a vote of censure. It is significant to note that censure dissolution and return of a majority had not taken place in France for over half a century.



cated De Gaulle's assertion that the popular election of the President would by itself increase the authority of the incumbent of that office.

"The popular election of the President," observe Jean Blondel and Godfrey, "may thus come to be a springboard in future moves towards presidential rule; it may equally be De Gaulle's last effort to bring the country round to his view of the political system. Only time will tell, but it is clear that the changes which have taken place between 1958 and 1965 have been at least as important (if not more important) for the shaping of the new regime as the test of the Constitution itself."<sup>8</sup>

#### Limited powers of Parliament

The new constitution established a "rationalized" Parliament—a Parliament with limited powers. Only two sessions of the National Assembly and the Senate take place in a year. The first session, the Constitution prescribes, begins on October 2 and lasts for eighty days, and the second on April 2, and it cannot last for more than 90 days, a maximum of five months and twenty days in all.<sup>9</sup> Extraordinary sessions may take place at the request of the Prime Minister or of a majority of the members of the National Assembly "on a specific agenda." They are convened and closed by a decree of the President of the Republic.<sup>10</sup> But De Gaulle was of the opinion that the President had the last word on whether to convene an extraordinary session or not, despite the terms of the Constitution.

Parliament can legislate only on matters defined in the Constitution. The Government can make laws on all other matter by simple decree. Articles 37 of the Constitution provides: "Matters other than those which are in the domain of law shall be subject to rule-making power." Laws to be voted by Parliament are enumerated in Article 34. The distinction between the law-making and rule-making authorities may not be incompatible with parliamentary government, but it certainly reverses the traditional relationship between the legislative and rule-making authorities in France and is in conflict with the Republican traditions of

the country. Hitherto Parliament was supreme and it could delegate legislative powers to the government. But there had, also been "special" powers granted and withdrawn at the will of Parliament. The supremacy of Parliament had, therefore, remained intact. Henceforth, power to legislate is definitely limited by the Constitution, and, outside these limits, powers belong to the rule-making authority, the Government.

The Constitution also allows Parliament to delegate law-making power to the executive. Article 38 says: "The government may for the execution of its programme ask Parliament to authorize it to take by ordinances, within a limited period of time, measures which are normally reserved to the domain of law." Such ordinances come into force as soon as they are promulgated, but they are null and void if a bill for their approval is not submitted by the government to Parliament within the prescribed period of time or if the approval of the bill is rejected.

It is not Parliament, but Government which fixes the order of business.<sup>11</sup> The President of the National Assembly is now elected for the whole legislative term whereas the President of the Senate is elected for three years.<sup>12</sup> Hitherto the President of the National Assembly was elected every year and this placed him at the mercy of the various parliamentary groups. He could, under the circumstances, neither be independent nor impartial. Nor could he command the same dignity and prestige as his counterpart does enjoy in Britain.

Parliament is no longer free to establish its own Standing Orders. Such orders must be found to be in accord with the Constitution by the Constitutional Council, before they become operative.<sup>13</sup> The number of the Parliamentary Committees—Standing Committees—has been fixed and their functions are strictly circumscribed.<sup>14</sup> Now only the Government Bills and not the amendments made by the Committees and counter-proposals suggested by them come before Parliament for consideration. A Minister alone introduces, pilots and defends the Bill.

8. Blondel, J., and Godfrey, E.D., *The Government of France*, pp. 34-35.

9. Article 29.

10. Article 30.

11. Article 48.

12. Article 32.

13. Article 61.

14. Article 43.



Though not a member of Parliament, a minister is constitutionally empowered to appear in both the Chambers, introduce Bills and take part in debates. The Government has the right to reject all amendments and to demand a single vote on its own text with only those amendments that it accepts—the procedure as the ‘blocked’ vote.<sup>15</sup>

All these provisions are directed against government by Assembly and eliminate the practices which had hitherto plagued governments. Many of the Procedural Rules “reflect a genuine desire to check some of the more flagrant abuses of the past and are consistent with the strengthening of executives in modern democracies. Others, however, are designed to weaken Parliament.”<sup>16</sup>

### Parliament is Bicameral

Parliament is bicameral, composed of the National Assembly and the Senate. The Deputies are elected directly whereas the members of the Senate by indirect suffrage. The Senate assures representation of the territorial entities of the Republic and Frenchmen residing outside France are duly represented in the Senate. Deputies are elected for a nine years term and one-third of its membership is renewed every three years. The Constitution increases somewhat the powers of the Senate. In the fourth Republic, the Council of the Republic, the upper chamber named then, had no overriding power to veto legislation. It could in practice only force the National Assembly to discuss for the second time the bills that it had passed. Though a reform had taken place in 1954, which had slightly increased the powers of the Council of the Republic, but the main limitation was not substantially removed. The makers of the Constitution of 1958 attempted to increase the authority of the Senate and magnify its position. The Senate was given an ironclad veto over legislation if the Prime Minister and the Government desired it. Article 35 ordains that all laws shall be voted by Parliament. Articles 45 empowers the Prime Minister to convene a joint conference of members equally drawn from both Chambers to iron out the differences, if any. It is, therefore, up to the Prime

Minister to call a meeting of the joint conference, and if he does not do so, the Bill *ipso facto* dies.

### Ministerial Responsibility

The Government continues to be responsible, as in the previous Republics, to the National Assembly.<sup>17</sup> An Assembly can overthrow the Government by half of the total of its membership plus one, that is, by an absolute majority. It means that Deputies who abstain from voting are counted as having voted for the Government.<sup>18</sup> But signatories to the motion of censure or no confidence, if the motion is lost cannot move another one in the course of the same legislative session. There is, however, no such bar if the motion of censure is moved by the same signatories when the Prime Minister himself seeks a vote of confidence from the National Assembly on any general issue of policy or on any given legislative bill.

The power to dissolve Parliament, which is the prerogative of the Prime Minister in countries with Parliamentary system, belongs to the President of the Republic in France under the Constitution of 1958. The President can dissolve the National Assembly at any time and for any reason solely at his discretion.<sup>19</sup> There is only one limitation. He cannot dissolve it twice within the same year. The Constitution also enjoins another formality. The President is required to consult the Prime Minister and the Presidents of the two Chambers while announcing dissolution.

### The Referendum

Another innovation of the 1958 Constitution is that the President of the Republic can bring certain issues before the people at a referendum. Article II provides that the President of the Republic “on the proposal of the government....or on joint resolution by the two legislative assemblies.....may submit to a referendum any bill dealing with the organisation of public powers, the approval of an agreement of the Community, or the authorization to ratify a treaty, that without being contrary to the Constitution would effect the functioning of existing institutions.” Article 89 also provides for a referendum on amendment of the Constitu-

15. Article 44.

16. Macridis, R. C., and Ward, R. E. (Eds.), *Modern Political Systems : Europe*, p. 261.

17. Article 17.

18. Article 49.

19. Article 12.



tion. The President has, thus, the power to submit to a referendum the approval of a projected bill concerning the organisation of public institutions and an amendment of the Constitution. But the calling of a referendum is the personal act of the President. He may elicit or refuse it depending on the circumstances.

In the case of a constitutional amendment, the President may decide that constitutional amendment proposed by the Government to Parliament need not be submitted to a referendum after it has been adopted by Parliament. In this event the proposal is sent to a joint meeting of the two Chambers instead of going through the two Chambers separately and the proposed amendment becomes effective when approved by a three-fifths majority of votes. This provision was, perhaps, intended to accelerate the procedure in cases of rather technical amendments and was used in 1960, in order to make it possible for the Community to be transformed into a loose confederation of independent states, and in 1963, to change the timing of the sessions of Parliament.

The use of referendum under Article 11 is limited to three types of measures: those concerning the organization of the public authorities; approving an agreement with the Community; or authorizing ratification of a treaty which would effect the functioning of institutions. 'This Article,' observe Jean Blondel and Godfrey, "has led to the clearest cases of unconstitutional action on the part of the President, both in spirit and letter."<sup>20</sup> The constitutional provision is that the President may, on the proposal of the government during parliamentary sessions or on the joint proposals of the two assemblies, submit to a referendum any bill dealing with any of the measures referred to above. This Article had been applied on three occasions, twice over Algeria, and on the last occasion over the method of election of the President, "the initiative clearly came from De Gaulle himself; the form of a 'proposal' by the Government was respected, admittedly, but no one doubted who the real originator of the proposal was."<sup>21</sup> The second implication of Article 11 is, though it does not expressly state so, that the Bill be discussed and adopted by Parliament and, then, submitted to the people at a referendum for their approval. This is the only logical interpretation in view of the practice

hitherto followed in France. Nor had there been any suggestion that a Bill might be adopted either by Parliament or by the people. In the absence of a specific provision to this effect, the only inference is that the President may refer a Bill to a referendum of the people only when it had, in the first instance, been adopted by Parliament. But the President in all these three cases—twice over Algeria, and, then, on the method of Presidential election—bypassed Parliament and submitted the projected Bills to a referendum.

Article 11 does nowhere specify that the procedure prescribed therein covers an amendment of the Constitution. The procedure for amending the Constitution has been clearly and definitely stated in Article 89, and provides for a referendum too. But De Gaulle utilised Article 11 to introduce the proposal that the President of the Republic be elected by universal suffrage. Any change or modification in the method of election of the President requires amendment of Article 6 of the Constitution. It was clearly an unconstitutional act of the President. But its validity was not questioned in the Constitutional Council.

#### The Constitutional Council

The Constitution establishes a Constitutional Council and it replaces the Constitutional Committee of the Fourth Republic. France had never in the past any judicial organisation to review legislation and determine its constitutionality or otherwise. The Constitution of the Fourth Republic provided for the Constitutional Committee to ensure that the proposed laws were in conformity with the Constitution and that any law of doubtful constitutionality could be put into effect only by amending the Constitution according to the prescribed procedure. The Constitutional Committee was a non-judicial body consisting of Presidents of the two Chambers, seven members chosen by the National Assembly from the beginning of each session from outside its own membership, and three members similarly chosen by the Council of the Republic (Senate of the Fifth Republic), a total of 12, sitting under the chairmanship of the President of the Republic. The function of the Committee was to examine any law passed by the National Assembly, prior to promulgation, whenever so requested by the President of the Republic and the Presiding officer of the

20. Blondel J., and Godfrey, E. D., *The Government of France*, pp. 44, 45.

21. *Ibid.*



Council of the Republic. Whenever the Council of the Republic had doubts about constitutionality of a measure passed by the Assembly, it passed a resolution requesting its own presiding officer and the President of the Republic to refer the matter to the Constitutional Committee. The Committee would examine the disputed measure and endeavoured to iron out the differences between the two Chambers. If it could not succeed to bring about an agreement the Constitutional Committee would give its decision. If it decided that the objection raised by the Council of the Republic was not valid and the measure in dispute did not conflict with the Constitution, it was promulgated forthwith. If it decided that the measure was in conflict with the Constitution, it would be sent back to the National Assembly with a direction that the proposed legislation should be passed in conformity with the Constitution or the Constitution be duly amended. It was for the National Assembly to determine whether to abandon the measure or to proceed to amend the Constitution.

The Constitutional Council of the Fifth Republic is composed of nine members who serve for a period of nine years. Three are nominated by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate. They are renewed by a third every three years. In addition to these nine members, all former Presidents of the Republic are members *ex-officio*; General Charles De Gaulle refused the Council seat when he resigned as President in 1969. The President of the Council is appointed by the President of the Republic and he exercises a casting vote in case of a tie.

The Constitutional Council has four distinct functions. First, it supervises the regularity of the election of the President of the Republic, and the referendums and announces the result. The Council is responsible for declaring the office of the President vacant, if for any reason or cause the President of the Republic cannot carry out his duties. It decides cases in which the regularity of parliamentary elections is contested. Before 1958, contests arising out of parliamentary elections were decided by each House. The Constitutional Council has taken speedy decisions thus avoiding bitter and long controversies in the legislative assemblies in the past.

Second, the Constitutional Council must

be consulted on the conformity with the Constitution of Organic laws and the Standing Orders of both the Houses of Parliament. The Council merely pronounces on the constitutionality, leaving the government or Parliament, as the case may be, to take the appropriate step to regularize the situation. Its decision is final. There had been a sharp conflict between Parliament and the Council with regard to the constitutionality of the Standing Orders. Parliament re-introduced various clauses in the Standing Orders along lines of pre-1958 arrangements, which the Constitutional Council felt were in conflict with the new Constitution and, accordingly, held them unconstitutional. One of these had allowed for the possibility of vote following debate on questions. This would have indirectly brought back, though in a limited way, the practice of interpellation if the Constitutional Council had not pronounced against it. Interpellations had been the bane of French politics during the preceding Republics.

Third, the Council acts as an advisory body to the President of the Republic if he is contemplating the assumption of emergency powers. Article 16 of the Constitution requires that the Constitutional Council must be consulted by the President, both with regard to the existence of the emergency (on which its opinion, with reasons, must be published), and the measures that he proposes to deal with it. But the President is not constitutionally bound to accept its advice. It is just a consultation and it is for the President to accept the opinion of the Constitutional Council or not. It may be noted that whereas consultation with regard to threat to the integrity of the country, independence of the nation, or danger to the execution of international commitments, and interruption to regular functioning of the constitutional organs of government is mandatory with the Prime Minister, the Presidents of the Chambers and the Constitutional Council, consultation with the latter alone is necessary with regard to the measures which the President may deem necessary to meet the threat or to deal with it.

Finally, all bills (other than organic), including treaties, may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, or one of the Presidents of the two Chambers to seek its ruling. A declaration of unconstitutionality suspends the promulgation of the bill or the application of the treaty. It is



also the guardian of legislative-executive relations. It decides all claims made by the government whether Parliament has exceeded its legislative competence or not. The decisions of the Council are binding on the Executive and Parliament and on all judicial and administrative authorities.

"It is as yet too soon," observed Jean Blondie and Godfrey, "to state whether the Constitutional Council will remain a part of 'living' Constitution."<sup>22</sup> But the process of constitutional review provided by the Constitution of the Fifth Republic essentially differs from the process of Judicial review obtainable in the United State of America. The Constitution of 1958 does not provide for anything that could be described as judicial review. It simply creates a body which, within certain specific and narrowly defined limits has the function of deciding on the constitutionality of governmental or Parliamentary acts. The Council has no general responsibility for ensuring respect for the Constitution. It can express its opinion only if consulted on matters enumerated above and on the initiative of the persons mentioned. It has no power to enforce its decisions. If the President of the Republic, the Prime Minister and Presidents of both Houses of Parliament were to agree among themselves to refrain from consulting the Constitutional Council on a matter where consultation is optional, there is no means by which the Council can make its views known. A citizen cannot appeal to it nor can any Court of Law. It is not competent to judge matters where individual rights are violated. The Constitutional Council is not, therefore, in any sense comparable to the United States Supreme Court.

Nevertheless, on matters on which the Constitutional Council must be consulted, it has served so far as a watchdog over Parliament. There was a sharp conflict of opinion between Parliament and Government on the question of taking votes on resolutions as provided in the original Standing Orders. The Constitutional Council, whose approval of Parliamentary Orders must be obtained according to the Constitution of 1958, decided that votes on resolutions were unconstitutional. In January 1982 the Council threw out the original nationalisation Bill (involving five major industrial groups, 39 banks and two financial holding

companies) ruling that certain clauses—notably those dealing with compensation to stockholders—were unconstitutional. The Government subsequently improved compensation terms, revised other clauses and streamlined the revamped Bill through the Socialist controlled National Assembly. The Bill was promulgated after the Constitutional Council rejected objections by Opposition parties to parts of a revised version of the Government Bill. The Council has, on the whole, widely received approbation for its admirable work and all parties, except the Communists, appear anxious to expand its jurisdiction. The programme of all the major non-Communist organizations for the 1967 General Election included a section aiming at creating a "real" Supreme Court.

### Emergency

When the institutions of the Republic, the independence of the nation, the integrity of its territory, or the execution of international engagements are menaced in a grave and immediate manner and the regular functioning of the public powers is interrupted, the President of the Republic may take whatever measures are required by the circumstances. This is a personal and discretionary act of the President. The President needs only to inform the nation by a message, and to consult the Constitutional Council. The National Assembly, however, convenes automatically and cannot be dissolved during the period of emergency. We shall revert to this aspect of Presidential powers in the following Chapter.

### Revision of the Constitution

Like the Constitution of the Fourth Republic, the Constitution of 1958 includes a special procedure for revision. It is relatively simple. There are two methods to amend. The right of initiative for the revision of the Constitution can come either from the President of the Republic on the proposal of the Prime Minister, or from private members of Parliament. A proposal for amendment must, to be effective, be voted first in identical terms by both Houses of Parliament and then ratified at a referendum. A proposal stemming from the President of the Republic and approved by the two Chambers by a simple majority in each House may go, at the President's discretion, either before the two Chambers meeting jointly in a congress and passed by a three-fifths majority, or

22. Blondel J., and Godfrey, E. D., *The Government of France*, p. 37



to the people at a referendum. Thus, an amendment emanating from the Government, may either go before the congress of two Houses or direct to the people at a referendum. A proposal stemming from a private member of either House must always be submitted to the people at a referendum. President De Gaulle, however, claimed, by invoking Article 11, that an amendment can also be submitted directly by the President to the people at a referendum, thus, bypassing Parliament.

There are two limitations on the right to amend the Constitution. The Republican form of government is not subject to revision, and the amendment procedure may not be initiated or pursued when the integrity of the country is at jeopardy.

The procedure for amending the Constitution gives to the Senate an effective veto as the first stage of revision is required, under Article 89, to be voted in identical terms, in both the Houses of Parliament. If the Senate does not agree to the amendment, it fails. Under the Fourth Republic the Council of the Republic had no power to initiate a resolution for amending the Constitution. It originated from the National Assembly and after having passed therefrom it was referred to the Council of the Republic. If it disagreed with the National Assembly, its consent was not necessary if the National Assembly could gather a two-thirds majority on the second reading of the Bill. If the requisite two-thirds majority could not be secured a referendum was held.

There are certain other ambiguities as well in the amending procedure. Article 89 does not say anything regarding the voting of a proposal for revision. Article 126 of the Standing Orders, however, makes it legal that the ordinary legislative procedure is to be used, that is, a simple majority is required for an amendment to pass in both the Houses of Parliament.

#### Appraisal of the Constitution

The Constitution which established the Fifth Republic, adopted by the people at a referendum by an unprecedented overwhelming majority, was a personal triumph of General De Gaulle. The Communists and others, including a section of the Socialists, Radicals and the Radical Socialists, who opposed the Constitution, failed to rally the people to their side partly because they were in a mood to accept any reasonably alternative to a discredited

Constitution of the Fourth Republic and partly because the voters knew that a negative vote would mean the dictatorship of the army. General De Gaulle came to power as it was thought that he alone was acceptable to the army which was threatening to seize power and subvert democratic institution.

The 1958 Constitution was designed to give France a stable and strong government by eliminating the pitfalls of the earlier Constitutions. The Fifth Republic retained the parliamentary system of government, but, at the same time, rendered the President of the Republic exceptionally strong and endowed him with emergency powers and others more extensive than even those possessed by the American President. But a powerful Head of the State is the negation of the theory and practice of a Parliamentary system that the 1958 Constitution established. The Cabinet still remains there, but its has been deprived of even its basic and essential functions and responsibility. The President of the Republic nominates the Prime Minister and other ministers are appointed on the recommendation of the Prime Minister. In the presence of the multiplicity of parties and in the absence of a constitutional provision or a convention that the President shall appoint a Prime Minister-designate after fullest consultation with the various party leaders, his choice significantly matters. Then, the rule of incompatibility, which makes it obligatory for a minister to relinquish on appointment his seat in Parliament, and the provision that even outsiders who had not contested election for a parliamentary seat can be appointed ministers, destroys the team spirit and cohesiveness of the Cabinet which is the *sine qua non* of ministerial responsibility that the Constitution specifically enjoins. The Head of the State in a Parliamentary system keeps aloof from politics and he does not preside over the Cabinet meetings where policy is formulated and decided. The 1958 Constitution provides that the President of the Republic presides over the Cabinet meetings. It is the prerogative of the Prime Minister, in Parliamentary system, to advise the Head of the State to dissolve Parliament and such an advice is generally accepted. But in France, the President dissolves Parliament in consultation with the Prime Minister and the presiding officers of the Senate and the National Assembly. It is a mere consultation and the decision is that of the President alone. The President makes



treaties and takes steps during emergency to combat it in order to safeguard the independence of the nation, territorial integrity of France and ensure execution of international agreements. What is an emergency and what measures are necessary to combat it is the sole determination and decision of the President. The President simply consults the Prime Minister and the presiding officers of the Senate and the National assembly, and the Constitutional Council without necessarily having their approval on the measures taken to meet emergency.

The Constitution of the Fifth Republic is neither Presidential nor Parliamentary. The responsibility of the government to Parliament is in conflict with the basic principles of the Presidential system which hinges upon the Separation of Powers and checks and balances. The powerful and independent position of the President of the Republic runs counter to the Parliamentary system. In the opinion of some, the French Constitution of 1958 is essentially a monarchical constitution in a republican disguise and its parallel existed in France during the reign of Louis Phillips from 1830 to 1848. Under that system the monarch guaranteed the stability and continuity of government. He ruled rather than governed and left the day-to-day administration of the government to cabinet. But when a crisis arose he stepped in and decided with finality the measures to meet the crisis, and resolve the problems arising therefrom.

The 1958 Constitution had a special mission which General De Gaulle was committed to fulfil and he designed the Constitution in that direction. France was in dire need of a stable and strong government and the General, under compulsion of circumstances to retain republican institutions, combined democracy with authority concentrated at a single point avoiding the vagaries of the elected representatives by cutting short the power and functions of Parliament. But the price of orderly, responsible and stable government is too high in terms of a Parliamentary system.

Parliamentary procedure, has been modified in order to rationalise Parliament to enable the Government to exercise effective control over legislative business. The downfall of the Ministry has been rendered much more difficult

than before. The President has been vested with the power to refer back a Bill duly passed by Parliament within fifteen days of its approval by the latter to debate it all over again or in part and Parliament has no right to refuse re-consideration. The President can also submit to a referendum of the people a projected Bill concerning the public power. He can bypass Parliament, as De Gaulle did on three occasions, and directly submit to a referendum Bills amending the Constitution under the cover of Article 11. There is another significant provision in the 1958 Constitution which essentially curtails the legislative powers of Parliament. Parliament votes only essential and fundamental laws. On less important matters it has no vote. These will be decided by Government and enforced by decrees.

The Constitution, therefore, seeks to make the President and the Government very strong *vis-a-vis* Parliament. And in a bid to do so, it is ambiguous and confusing at very many places. It is the living specimen of compromise, and the Constitution of the Fifth Republic has been described as an "untidy constitution." This curious amalgam of irreconcilable principles must sooner or later lead to conflict between the President and the Cabinet or between the Executive and Parliament. Fortunately, nothing untoward happened during the life-time of De Gaulle and his continued occupation of the office of the President from 1958 to 1969, but portents are there. De Gaulle is dead and the habits of a nation seldom die as they do not with the individual. The conflict may end in the Presidency virtually becoming what it used to be under the Fourth Republic unless the voters back the President by giving him a Parliament which is amendable to his control, or decide to follow the pattern of Presidency as obtainable in the United States of America. French democracy had not functioned smoothly and efficiently in the past and the same possibilities are in store for the future because of sharp divisions among the people which are reflected in her party system as also because of so much bitterness and violent antagonism among political elements. The nation has neither forgotten old conflicts nor taken steps to resolve new conflicts. French politics is more ideological rather than practical.



## CHAPTER III

# The Presidency

### Mode of Election

The framers of the 1958 Constitution endeavoured to make the President of the Republic the repository of prestige and prerogatives so that the office may provide for the continuity of the State, cement the bonds between France and her former colonies, and vigilantly supervise the decorous functioning of the Constitution. The President, in their opinion, was the "Keystone of the arch" of the Constitution to be established; both the symbol and the instrument of reinforced executive authority. In order to accomplish it, they modified the manner in which the President of the Republic was to be elected. Under the Fourth Republic he was elected at a joint session of both the Houses of Parliament for a term of seven years and was eligible for re-election for one term more. Originally, the Constitution of the Fifth Republic provided for an indirect election by an electoral college consisting of some 80,000 "grand electors" that included members of Parliament, of the General Councils and of the Assemblies of overseas Territories and elected municipal Councillors and supplementary delegates from the larger municipal councils. Representation in the electoral college was roughly proportionate to population, but the smaller rural communes were over-represented.

This system of Presidential election was widely criticised by many political leaders and constitutional lawyers "who saw in it the perpetuation of the old political forces of the Fourth Republic."<sup>1</sup> In the middle of September 1962, General De Gaulle proposed to modify the mode of Presidential election and suggested that after the end of his own term of office early in 1966, or in the event of his death in office, the President should be elected by direct popular vote. In a message to Parliament in

October 1962, he put the issue succinctly and said: "when my seven-year term is completed or something happens that makes it impossible for me to continue my functions,<sup>2</sup> I am convinced, that a popular vote will be necessary in order to give.... to those who will succeed me the possibility and the duty to assume the supreme task...." In a broadcast message to the nation he announced that Articles 6 and 7 of the Constitution would be revised by a Bill to be voted on at a Referendum and by a procedure as laid down in Article 11, that is, the proposed amendment would be submitted directly to the people for their approval or rejection without being debated by the two Houses of Parliament as provided in Article 89 relating to amendment of the Constitution.

The Constitution amending Bill met with stout opposition. The President's decision to invoke the provisions of Article 11 was characterised as unconstitutional and for the first time the political parties joined hands to oppose it tooth and nail. They tabled a vote of censure against the Government and the motion was carried by 280 votes. General De Gaulle thereupon dissolved the National Assembly and proceeded with his plans to hold the referendum on the proposed amendment. The legislative election was postponed till then.<sup>3</sup> On October 28, 1962 the people endorsed De Gaulle's proposal<sup>4</sup> and Articles 6 and 7 of the Constitution, thus, stood amended.

The President is now elected by universal direct suffrage, and by two ballots unless a candidate obtains an absolute majority of the votes cast at the first. If the requisite majority is not obtained at the first ballot, the second is held on the second Sunday after the first. At the second ballot only two candidates may stand—the two at the top of the poll or who had been left in

1. Macridis J., and Ward, A. E., *Modern Political Systems : Europe*, p. 255.

2. The President missed assassination the previous month at L Petit Clamart.

3. According to Article 12 a General Election takes place not less than twenty days nor more than forty days after the dissolution.

4. 12,808,600 voted "Yes", 8 million "No", and 6 million abstained from voting.



that position by the withdrawal after the first ballot of candidates who polled more votes.

The President is elected for a term of seven years, as in the previous Republic. The Constitution is silent on the question of re-election. It is presumed that the President can offer himself and be elected for as many terms as he may like. There is no limit to his re-eligibility. The Constitution simply provides that the President shall be elected for seven years by universal suffrage<sup>5</sup>. No qualifications for the office are mentioned either. The sole disqualification mentioned in the Constitution of the Fourth Republic that the members of the families who had reigned over France could not be eligible for the post of Presidency has been dropped. Nor does the Constitution prescribe any minimum age limit for the Presidential office.

#### Succession to the Presidency

The supervision of the Presidential election, including the investigation of alleged irregularities at the election and the promulgation of result, the Constitution entrusts to the Constitutional Council.<sup>6</sup> The election of the new President takes place not less than twenty and not more than thirty-five days before the expiry of the term of office of the retiring President. In case the Presidency falls vacant, for any reason, the President of the Senate replaces the President until the President resumes his functions. If the Constitutional Council declares, on petition of the Government, by an absolute majority of its members, the President to be permanently incapacitated the President of the Senate temporarily performs the functions of the President until the new incumbent is elected. The new President must be elected within not less than twenty and not more than thirty-five days from the date of the Constitutional Council's declaration of the vacancy or

incapacity.<sup>7</sup> In his capacity as Acting President of the Republic, the President of the Senate, is specifically prohibited by the Constitution<sup>8</sup> from using Articles 11 and 12 (governing respectively the use of the referendum relating to any Government Bill dealing with organization of the political branches of government or ratification of a treaty, and dissolution of the National Assembly), and Articles 49, 50 and 89 (governing, respectively conditions in which a government may be defeated, its obligations in this eventuality, and the revision of the Constitution).

### POWERS OF THE PRESIDENT

#### Traditional Functions

The Constitution of the Fifth Republic maintains the political irresponsibility of the President and as Head of the State he continues to enjoy the prerogatives or the traditional functions that were vested in the office in the past. The President appoints the Prime Minister and accepts his resignation.<sup>9</sup> On the proposal of the Prime Minister, the President appoints and dismisses the other members of the government.<sup>10</sup> He presides over the meetings of the Council of Ministers,<sup>11</sup> of Councils and Committees of National Defence<sup>12</sup> and of the Superior Council of the Judiciary.<sup>13</sup> The President is the Commander-in-Chief of the Armed Forces of the country.<sup>14</sup> He negotiates and ratifies treaties,<sup>15</sup> accredits ambassadors and Envoys Extraordinary to foreign powers and receives ambassadors and Envoys Extraordinary accredited to him<sup>16</sup> and makes appointments to some civil and military posts of the State.<sup>17</sup> He signs the Ordinances and decrees that have been considered in the Council of Ministers,<sup>18</sup> sends messages to parliament,<sup>19</sup> promulgates laws,<sup>20</sup> and may ask for the re-examination of a Bill or some of its articles, which cannot be refused.<sup>21</sup>

5. Article 58.

6. Article 7.

7. Article 7.

8. *Ibid.*

9. Article 8.

10. *Ibid.*

11. Article 9.

12. Article 15.

13. Article 65.

14. Article 15.

15. Article 52.

16. Article 14.

17. Article 13.

18. *Ibid.*

19. Article 18.

20. Article 10.

21. *Ibid.*



He is kept informed of all negotiations leading to the conclusion of international agreements.<sup>22</sup> The President has the right of pardon.<sup>23</sup>

In exercising these formal functions, the President, like his predecessors, acts with the concurrence of the Prime Minister, whose countersignature, together with that of any other responsible minister, is necessary.<sup>24</sup> The most important exception to the countersignature of the Prime Minister is the appointment of the Prime Minister under Article 8 and it is understandable because the resigning government cannot take responsibility. But De Gaulle claimed, in his Press conference on January 31, 1964, that the President has the right to dismiss the Prime Minister. M. Pompidou implicitly accepted this view when he said (April 24, 1964) that it was inconceivable that a Prime Minister should remain in office if he had lost the President's confidence.<sup>25</sup> When differences developed between General De Gaulle and Prime Minister Debre, he resigned. George Pompidou resigned in July, 1968, because of differences of opinion on the President's plan to institute a system of participation of workers and employees in the management and profits of enterprises.

The Constitution vests in the President the power of pardon and consults the Higher Council of the Judiciary under conditions determined by an organic law. The Higher Council of Judiciary also assists the President in the appointment of High Court Judges.

#### Personal or Discretionary Powers

Besides the traditional functions, the Constitution vests the President with personal or discretionary powers and in the exercise of which the countersignatures of the Prime Minister are not required. They are truly and substantially Presidential acts and he exercises them solely in his discretion. The Constitution specifically mentions four of them. In the first place, the President can dissolve the National Assembly at any time, on any issue and for any reason. The Constitution imposes only one limitation on the President's power of dissolution. He cannot dissolve it twice within the same year.<sup>26</sup> The other limitation that the President, before announcing dissolution of the Na-

tional Assembly, should consult the Prime Minister and the Presiding officers of the two Houses of Parliament is a sheer formality. In Britain and other countries having parliamentary system, power of dissolution is the sole right of the Prime Minister and it is never refused by the Head of the State whenever it is asked. The Head of the State has no right to dissolve Parliament on his own initiative. In France, the initiative rests with the President of the Republic and he only consults the Prime Minister and the Presiding officers of the two Chambers. Consultation is not consent and, accordingly, it has no binding force. The ultimate decision is that of the President.

The President may refuse dissolution when asked by the Prime Minister. It was reported that Michel Debre had wanted a dissolution after the Algerian cease-fire agreement had been ratified by the people at a referendum, but President De Gaulle decided against dissolution. On the other hand, when the combined Opposition parties defeated the Government on a vote of censure in 1962, the President promptly dissolved the National Assembly although the Prime Minister had submitted the resignation of his Government. But General De Gaulle decided not to accept the resignation of the Government and to dissolve the National Assembly instead. ⑥

The second personal power of the President relates to the submission of Bills to the people at a referendum. Calling of referendum is a personal act of the President and the Constitution specifically provides that it does not require the countersignature of the Prime Minister.<sup>27</sup> It is his decision to elicit or refuse submission of a Bill of specified nature or a treaty to a referendum. The President may decide that a constitutional amendment proposed by the Government need not be approved at a referendum after it had been adopted by Parliament. In such an event, the proposal is sent to a joint meeting of the two Houses of Parliament and if adopted by a three-fifth majority of the votes cast, it becomes an amendment of the Constitution. Whatever be the exigencies of designing this procedure, it is a Presidential act no doubt and the President determines it in his discretion.

22. Article 52.

23. Article 17.

24. Article 19.

25. Dorothy Pickles, *The Fifth French Republic*, p. 133 f.n.

26. Article 12.

27. Article 19.



On the other hand, the President is required to submit certain Government Bills to the referendum of the people. Such Bills relate to the organization of public authorities, carrying approval of a Community agreement, or proposing to authorize the ratification of a treaty which, without being contrary to the Constitution, would effect the functioning of institutions.<sup>28</sup> Article 11 which contains these provisions categorically enjoins that the President on the proposal of the Government during (Parliamentary) sessions or on a joint motion of the National Assembly and the Senate may submit to referendum all measures enumerated above. But on all three occasions when the provision of this Article were invoked the initiative invariably came from the President and not from the Government of Parliament. In the second place, the President invoked this Article in 1962 and claimed that this Article empowered him to submit directly to the people amendments to the Constitution ignoring the procedure prescribed in Article 89. It means that the President did not give any opportunity to the representatives of the people, by bypassing Parliament to discuss or move amendments to the proposals emanating from government.

When the institutions of the Republic, the independence of the nation, the integrity of the territory of France, the execution of international engagements are menaced in a grave and immediate manner and the regular functioning of the public powers is interrupted, the President may take whatever measures he deems necessary to combat the menace.<sup>29</sup> This is, again, a personal act of the President exercised in his discretion. The President needs only to inform the nation by a message and to consult the Constitutional Council on the measures taken or contemplated to be taken. The National Assembly however, convenes automatically and it cannot be dissolved during the tenure of the emergency. Thus, the President alone is entitled to decide when an emergency, as defined by the Constitution, exists, and what measures should be taken. His obligations are merely to consult the Presidents of the two Houses and the Constitutional Council and to inform the nation. The provision that Parliament meets as of right and it cannot be dis-

solved during the period of emergency as also that the opinion of the Constitutional Council with regard to the measures taken or intended to be taken must be published, does not provide any real safeguard against the Presidential exercise of emergency powers. The President has the right to assume full powers even if he acts unconstitutionally.

The Constitution also vests explicitly in the President certain other powers that he can exercise in his discretion. He has the power to nominate persons to civil and military posts unless it is otherwise provided by an organic law (a law passed by an absolute majority of the Senate and the National Assembly separately).<sup>30</sup> He signs all decrees and ordinances prepared by the Council of Ministers.<sup>31</sup> He promulgates the laws passed by Parliament. The Constitution enjoins upon him to do so within a period of fifteen days following the transmission to the Government the laws so passed. But he may send back, before the expiration of the specified period, to Parliament and ask for reconsideration of the law or of certain of its articles (clauses). Parliament has no power to refuse such a reconsideration. The President can raise question of unconstitutionality on a bill or on a law before the Constitutional Council.<sup>32</sup> He may send messages to Parliament and if not in session, it may be convened specially for that purpose.

#### The President as Mediator (Arbiter)

Article 5, which is the first in Title II of the Constitution and relates to the President of the Republic, explicitly charges the President to guarantee the functioning of the institutions of government. It reads: "The President of the Republic shall take care to see that the Constitution is respected. He shall ensure, by his arbitration, the regular functioning of the governmental authorities, as well as the continuity of the State. He shall be protector of the national independence of the nation, of its territorial integrity, and of respect for treaties and Community agreements." This is an all-embracing responsibility which the Constitution bestows upon the President. Mediation is a personal act involving the exercise of judgment. As a result, it gives to the President unlimited

28. Article 11.

29. Article 16.

30. Article 13.

31. *Ibid.*

32. Article 61.



field of action. His mediation spreads over almost every conceivable aspect of policy, domestic or foreign. He must see that the Constitution is duly respected and its commands unflinchingly obeyed. He devises means to ensure that by his arbitration the proper functioning of the institutions of the government is guaranteed and the continuity of the State is uninterruptedly preserved. He is the protector and, thus, the guardian of the national independence, of the integrity of the territory of the country, and of respect for Community agreements and treaties. The range of the President's responsibilities, in brief, extends to matters of war, foreign policy, the preservation of internal peace, and the functioning of governmental institutions. And above, all, the powers of the President are overriding, final and decisive. Speaking one week after his election to the Presidency in 1958, General de Gaulle reaffirmed his conception of the office and his own personal role. He said: "The national task that I have assumed, for the past 18 years is confirmed. Guide of France and chief of the republican State, I exercise supreme power to the full extent allowed and in accord with the new spirit to which I owe it."

The President rules as well as reigns. He is the custodian of the national unity. He may delegate his powers for the realization of national objectives to other organs of government, the Prime Minister, the Cabinet and Parliament, and they may take appropriate decisions thereon, but subject, in the case of conflict among Ministers or between the Cabinet and Parliament to the President's arbitration. This was at least De Gaulle's ideal and he ceaselessly strove for it. On three important occasions, he interpreted the Constitution in a manner which limited the powers of Parliament and on all three occasions President De Gaulle's decision was accepted. In the first instance, an absolute majority of the Deputies, which is the constitutional requirement under Article 29, demanded that Parliament should be convened in an extraordinary session, but the President asserted his right to decide whether it would be justifiable or not to convene an extraordinary session. He did not consider that the demand of the Deputies was cogent enough and refused to convene an extraordinary session.

On the second occasion in 1961, the emergency had been proclaimed and consequently Parliament was in session as required under Ar-

ticle 16. But when it adjourned for the summer vacation there had taken place farmers demonstrations in a number of Departments and parliamentarians decided to hold a special session of Parliament in order to introduce a bill dealing with the causes of agricultural discontentment and the remedial measures. Since Parliament was in session and it had only adjourned for a brief recess it was up to the Presiding officers to convene a special session. But De Gaulle intervened and opposed the convening of a special session on the ground that agricultural problems were totally unrelated to the exercise of his powers under Article 16, and for which purpose Parliament had been convened. He maintained that the special session, though constitutionally in order, was politically unnecessary, since the proposed legislation could be introduced a few weeks later during the regular autumn session.

The third was the familiar and now oft-repeated instance when De Gaulle decided to submit directly to the people on October 28, 1962, a bill modifying the constitutional provision relating to the election of the President of the Republic. This act of General De Gaulle has been held by an overwhelming majority of the French jurists as unconstitutional. A constitutional amendment is governed by the provisions of Article 89, and before its submission to the people at a referendum it must pass through both the Houses of Parliament. But De Gaulle bypassed Parliament and this act of the President was a clear contravention of the Constitution, though the President had defended his action under Article 11 of the Constitution. This Article, as pointed out earlier, does not relate to constitutional amendments.

#### **Extent of the Powers of the President**

The President of the Republic under the Constitution of 1958 is meant to be the Head of the State and, according to the letter and spirit of the Constitution, he should in normal circumstances be no more than that. Though the reality of the Constitution had become more presidential during the tenure in office of General De Gaulle, the basis of the government is parliamentary. Michel Debre, the chief architect of the Constitution, had unequivocally maintained that the "parliamentary regime was the only one suitable for France. The system of government the constitution of 1958 establishes in France, has two basic features, which charac-



terise all the parliamentary systems of government in Great Britain, Canada, Australia, India and many others. First, the executive is divided in two organs, the Head of the State,<sup>33</sup> and the government,<sup>34</sup> which led by the Prime Minister, is responsible for policy-making and policy-implementation.<sup>35</sup> Second the Government is collectively responsible to the National Assembly,<sup>36</sup> the representative Chamber, which can, by censure, force its resignation.<sup>37</sup>

Like his predecessors, under the Third and Fourth Republics, the President is politically irresponsible, except in the case of high treason, for which he can be tried before the High Court of Justice.<sup>38</sup> In few respects the Constitution of 1958 gives to the President, even where his traditional functions are concerned, a little more freedom and scope for action than his predecessors have had. For instance, the President negotiates treaties.<sup>39</sup> Under the Constitution of 1946, the President was simply "kept informed" of the negotiations. Then, the list of offices to which the President has now the right to make appointments<sup>40</sup> is far larger than that contained in the 1946 Constitution. The President of the Fifth Republic appoints the Prime Minister and Ministers proposed by him<sup>41</sup> without going through the process of designation as provided in the Constitution of the Fourth Republic. But in one respect he has less opportunity to act independently than his predecessors. In the exercise of his right to pardon the President now requires a countersignature of the Prime Minister and a responsible Minister. The previous Constitution made no provision as such. The first President of the Fourth Republic, M. Auriol, no doubt, sought advice on matters of pardon, but he did not submit his orders for countersignature.

All the same, it does not mean that the

1958 Constitution, vesting the President with such powers, eliminates the basic elements of parliamentary democracy. They are there, yet the President is vested with some special powers, which the previous Constitution did not contain. These are: the power of dissolution,<sup>42</sup> submission of Bills to the people at a referendum,<sup>43</sup> reference of certain Government Bills to the people for their approval or rejection,<sup>44</sup> and assumption of full powers in certain emergencies.<sup>45</sup> These powers, by their very nature and the restrictions that the Constitution imposes were intended to be exercised at rare intervals or in emergencies alone. But President De Gaulle made full use of these powers. His sole object in doing so was to strengthen and exalt his position. Accordingly, the Constitution of the Fifth Republic has been variously described. Some suggest that it was "tailor-made" for General De Gaulle, who was to become the first President of the Republic in December, 1958. But Jean Blondell and Drexel Godfrey remark, "This is, in fact, only partly true; it would be truer to say that the Constitution is becoming more and more tailor-made for De Gaulle, partly as a result of the constitutional amendment, partly as a result of customary change."<sup>46</sup>

General De Gaulle put the new conception of the office of the President under the Constitution tersely when he said in 1964 that the President "elected by the nation is the source and holder of the power of the State," the only man to "hold and to delegate the authority of the State." This assertion of the President meant, in the ultimate analysis, that the President can concentrate the powers of the State in his own hands, provided he holds his office as a result of the mandate of the people and as long as specific reforms, irrespective of the nature

33. Article 5 clearly establishes it, although it does not say so in clear and specific terms.

34. Article 20.

35. Article 21.

36. Article 20.

37. Article 49 and 50. In 1958, motion of censure against the government was carried in the National Assembly by 280 votes. The government resigned, though the President did not accept the resignation but dissolved the National Assembly.

38. Article 68.

39. Article 52.

40. Article 13.

41. Article 8.

42. Article 43.

43. Article 45 and 49.

44. Article 11.

45. Article 46.

46. Blondell, J., and Godfrey, E. D., *The Government of France*, p. 29.



and scope, are approved by the people by their own votes at a referendum.

The Constitution of the Fifth Republic as said earlier, is the result of compromise between two irreconcilable principles—principles which govern the parliamentary system in sharp contrast of a presidential system. The Algiers rebellion and the inability of the government of the Fourth Republic to deal with it effectively had abundantly proved that the strengthening of the Executive was an imperative need of the country. In fact, many political leaders had been suggesting, since more than a decade, various methods by which this could be achieved. General De Gaulle wanted that type of Executive wherein the President should have a much "higher" role and he should be concerned with the "permanent" interests of the nation. He had opposed the Constitution of the Fourth Republic from the start, resigned from the Premiership and retired from politics before it came into force. It was only natural that on his return to power twelve years later he should have refused to accept the institutions that he had already considered deplorable.

The compromise between the two diametrically opposed points of view was difficult to arrive at, because French "Republican" tradition was opposed to and suspicious of the presidential system of government. This suspicion goes back to the middle of the nineteenth century when the second Bonaparte overthrew the regime and established an Empire. At the same time, French people had not forgotten the failures of the Third Republic. The experiences of the Vichy regime, under the German occupation, were also living memories with them. The Algiers rebellion hardened their conviction that a parliamentary regime must be coupled with a strong and energetic Executive. The 1958 Constitution combined both, a strong Executive and a "rationalized" Parliament within the framework of a Parliamentary system.

Though General De Gaulle had agreed to the system of government with parliamentary institutions, but he saw potentialities in the various provisions of the Constitution, more especially in Articles 5 and 16 to nullify their impact. Gradually, from the conception of an arbiter, he assumed the role of the "Guide" of the nation and vested the office of the President with broad leadership functions. Presidency became the centre of policy-making not only in

foreign affairs but also in domestic issues. He established specialised bureaus and offices where policy alternatives were thrashed. The Prime Minister and his government knew nothing what was happening at the Elysee, the Presidential palace. The President, thus, emerged as the key policy-making organ by-passing the Prime Minister and his Cabinet, who, in terms of the Constitution, are charged with the duty of determining and directing the national policy and are collectively responsible for that to Parliament. The President adopted the device of directly appealing to the nation to vote for his policies and programmes. In the second term of his office, which began in January 1966, he decided, without any consultation with Parliament and most probably without the full knowledge of the Prime Minister and his Cabinet, to ask for the withdrawal of the United States forces from France, and, in effect, withdrew from NATO. In his various trips abroad, De Gaulle advocated his own foreign policy which often took the Ministers at home by surprise. When he advocated the "liberation" and "independence" of Quebec in the summer of 1967, even his own foreign Minister was taken by surprise.

Besides the impressive powers that the Constitution conferred on the President, General De Gaulle added new dimensions to the Presidency by considering himself to be the "Saviour" of the nation who was destined to usher in an era of stability and prosperity not only for the generation of his own times but for the coming generations too. Before his second term election in December 1965, he reminded his countrymen the role he had played in the past and what the country expected him to do in the years ahead. He said: "seven years ago I believe it was my duty to return to her head in order to save her (France) from civil war, to spare her from financial and monetary bankruptcy and to build her institutions to meet the requirements of the modern times and world. Since that time I have believed it was my duty to exercise the powers of Head of State so that France might on behalf of all her children, make an unprecedented stride forward in her internal development, restore complete peace and acquire throughout the world a political and moral position worthy of her. Today, I believe it is my duty to hold myself ready to continue my task weighing, with full knowledge of the



facts, the effort involved, but convinced that at this time it is best in order to serve France."<sup>47</sup>

De Gaulle ruled supreme for more than a decade and throughout his tenure he regarded both government and Parliament "as being, in their different ways, mere agents of the President." Public interest was focussed in him and not in the Prime Minister. There were protests in Parliament and the President paid no heed to them. In Oral Questions addressed to the Prime Minister on April 24, 1964, two Deputies, M. M. Mitterand and Coste-Floret, criticised the President in general for taking decision without consulting his Ministers and for ignoring both the Cabinet and Parliament "and also specifically for transferring to the President which should constitutionally be the Prime Minister's functions in the field of nuclear policy."<sup>48</sup>

On January 31, 1964, M. Coste-Floret addressing the Prime Minister observed, "We were told that you did not exist. Why did you not resign immediately?" Prime Minister M. Pompidou defended the President and his interpretation of the Constitution. He admitted that there was a profound modification of Presidential functions, but explained that in the referendum of 1962, the people had clearly and definitely confirmed their approval of General De Gaulle's conception of his functions and the manner in which he carried them out. The Prime Minister expressed the view that the importance of both the Prime Minister and the Government was enhanced "by their responsibility—on the one hand to the President and on the other to the National Assembly. Immediately after his death in 1970, Pompidou paid handsome tribute to his mentor. He said, "General De Gaulle is dead, France is a widow."<sup>49</sup> He appealed to his countrymen to follow the path he carved for the country and emulate the lesson he taught. "Let us gauge," he maintained, "the duties which gratitude imposes upon us. Let us promise to France not be unworthy of the lessons which have been dispensed to us and let De Gaulle live eternally in the national soul."<sup>50</sup>

De Gaulle relinquished Presidency in April 1969, when his proposals relating to the

organization of the Senate, and regional reforms were rejected at a referendum. His successor M. Pompidou was not even a fragment of his mentor, although he tried to maintain glory of the Presidency that he had inherited. But the process of the "Presidentialisation" of the regime was reinforced by Valéry Giscard d'Estaing, Pompidou's successor. Giscard won the 1974 Presidential election as an apostle of unity—a reformer who promised change without convulsion, a healer who sought to melt the "icy antagonism between Right and Left into a vigorous convivial center." But he could not fulfil his promise because France's historic division not only persisted but had become sharp. His handling of the foreign policy was impressive and abroad he powerfully consolidated the President's influence and prestige. He took the initiative of supporting Zaire, Chad and Mauritania and enunciated a clear African policy for France. He put forward a plan for European monetary union and boldly came out in favour of the entry of Spain and Portugal into the European Economic Community despite the political and economic problems to rise in his own country.

Giscard established himself the real leader of the nation and he emulated the lesson De Gaulle had taught, whose Finance Minister he was from 1962 to 1966, about the role of the Presidency. He regarded all affairs of the State as his "reserved domain" as foreign policy and defence were called under General De Gaulle. Giscard even interfered in the small details of policy execution, like the nomination of officials that his predecessor had left to the jurisdiction of the Prime Minister. He used the powers at his disposal in a far more thoroughgoing manner than even De Gaulle did. He issued instructions direct to Ministers and interested himself in the tiniest details of administration. He had formed around him a team of about 40 able, mostly young officials, many of them the product, like Giscard himself, of the Ecole Nationale d'Administration. Many people believed that it was this team at the Elysee, not the elected representatives of the people, who really governed France.

47. French Affairs, 183 (New York: Embassy of France, Press and Information Service (November 4, 1965), pp. 1-2.

48. The decrees of July 10, 1962 and January 14, 1964, were held to constitute a transference to the President the responsibility for the general direction of defence and of the right to decide on the use of the nuclear deterrent, Dorothy Pickles, *The Fifth French Republic*, p. 156 f.n.

49. *The Tribune*, Chandigarh, November 11, 1970.

50. *Ibid.*



"The trouble with Giscard," General De Gaulle is supposed to have said, "*c'est le peuple*." He had no common touch with the people. The system of governing the country, he ventured, caused resentment and hostility among the intellectuals and political strata. "For the first time, France is being governed by technocrats", snapped Madame Marie-France Garaud, the only woman candidate for 1981 Presidential election; "there is now a gap between the governed and the governors." And a distinguished ex-official, who worked closely with De Gaulle at the Elysee, was in no doubt that "Giscard has deformed the Constitution."

The victory of the Socialist leader, Francois Mitterand, over Valery Giscard d'Estaing in the 1981 Presidential election was essentially an expression of the people's desire of a change of 23 years' conservative rule rather than their willingness to take the country to the Left. The other factors that led to Mitterand's victory included Giscard's failure to cure the nation's ailing economy (rate of inflation running at 12.5 per cent and over a million and a half without jobs) and the unpopularity that he had gathered over the diamonds he had received from the deposed Emperor Bokassa.<sup>51</sup> By and large, however, Mitterand's success was the backing he got from the youth who needed jobs and security and the Communists who wanted to oust Giscard at any cost.<sup>52</sup>

The Socialist Party's main priority was decentralisation—to take from Paris the control of the regions and give them to local councils by proportional representation. Other equally important pledges made by the President related to the nationalisation of banks, 11 big industries and a few insurance companies. The President started his job fairly well to the admiration of the masses. The measures he had taken made Mitterand popular with even his opponents. Mitterand's victory heralded a qualitative change in the Elysee and in the government. He was known to the French as the "quiet force" the serene father-figure who never talked too much. He carried this image with him in the Elysee. There had been no rush to the media to explain himself. He controlled his Ministers discreetly, with little of the direct meddling, badly suffered from president Gis-

card. Mitterand's socialism is moral and patriotic. "Morality and national pride now combine in Mitterand's overriding determination that France should make up the ground it lost in the opportunistic, materialistic years of Gaulist and Giscardian economic progress." His foreign policy was distinguished for its leaning towards the third world countries rather than heavily tilted towards the advanced and capitalist countries. Nor had the President forgotten his relations with USSR despite the Communists unconditionally supported him in his election and were till 1983 participants in the government too.

In the March 1986 elections to the National Assembly the Socialist Party emerged as the single largest party and the right-wing headed alliance between the Gaullist Rally for the Republic (PRP) and the former President Giscard De Estaing's Union For French Democracy (UDF) won 291 seats in a 577-member House. It was the first time in the 28 years of the Fifth Republic that the Presidency and the Assembly were controlled by different parties. Prior to the poll, President Mitterand had warned that he would order an early Presidential election (due in 1988) rather than be "a cut-rate" President. But immediately after the poll he announced his decision to appoint a Prime Minister from the victorious right-wing coalition and, thus, put to rest that he would utilise his Presidential power to appoint a Prime Minister and thereby to foist an unrepresentative government on France. He appointed Jacques Chirac the Prime Minister.

The right-wing alliance was committed to the policy of 'privatization' of over-sweeping of nationalisation of banks and a dozen of France's powerful industrial groups. And Chirac wanted to do most of it by Presidential decrees meaning that President Mitterand would have to undo under his own signatures what his socialist government had done five years before. On July 14, 1986 in an interview on French Television, the President cast his political decision in decorous moral terms. To sign the 'privatization' decree, he indicated, would be to sell off France's national interests to "foreign interests." It meant that the only option with the Prime Minister was to go slow with his

51. "If I was a cannibal," complained Bokassa, "he was a cannibal. For 10 years, I was with Giscard. If I stole diamonds, he should be punished, too, because he got his diamonds." *The Sunday Standard*, New Delhi, May 24, 1981.

52. Georges Marchais, who himself was candidate for the Presidency and eliminated at the first round of election, pledged unconditional support for Mitterand at the second round.



programme and refer all such changes, he intended to make, to Parliament and get its verdict thereon. If the President did not bend to his conservative Cabinet plan and the Prime Minister was not inclined to follow the parliamentary process, the resultant confrontation could prove fatal to, what had been widely described, "cohabitation" between strange bed-fellows.

The year 1987 opened with the French government of the Prime Minister, Jacques Chirac, under fire from at least three different counts: a disruptive rail strike; domestic-based terrorism; and Libyan aggression in Chad. A series of strikes called by the pro-Communist General Confederation of Labour in support of the railwaymen, bus, metro and electrical workers disrupted their respective services in a show of labour opposition to the general economic policies of the conservative Prime Minister. The Chad problem and the persistent threat of hit-and-run terrorists strikes by Action Direct inevitably aggravated the "cohabitation" ten-

sions between President Francois Mitterrand and Prime Minister Chirac. In their messages of New Year greetings to the nation, the two leaders exchanged thinly shielded barbs in an effort to pin the blame for the prevailing turmoil. One French commentator on television characterised the situation as "a guerrilla struggle at the summit." The conservative government also stepped up its charges that the railway strike had become primarily "political", with the aim of undermining it. All this did not augur well for France with its historical background.

France has demonstrated that a combination of American-style Presidency and British-style cabinet is practically a working proposition. The socialist Mitterrand-led Presidential government could successfully cobalit with a conservative Ministry. Today Jacques Chirac has reversed these roles. He is a conservative President and at present (2002) successfully cobalits with a socialist cabinet led by Jaspers as Prime Minister.



## The Government

### The Cabinet

In the language of the Constitution, the Cabinet, composed of the Prime Minister and other Ministers, constitutes the Government which determines the policy of the nation and is responsible to Parliament.<sup>1</sup> While the role of the President is to ensure a "guardianship" of the Nation,<sup>2</sup> the role of the Government is to govern. The President of the Republic, no doubt, chairs the Council of Ministers,<sup>3</sup> but it is the Government as a whole, and in particular its leader, the Prime Minister, who is responsible for the policy of the Nation.<sup>4</sup> The Constitution accords special recognition to the office of the Prime Minister by custom known as the Premier.

The office of the Premier, before the 1946 Constitution, had always been precarious in authority and in tenure because of Ministries necessarily being formed from heterogeneous parliamentary groups. The framers of the Constitution of 1946 were fully alive to the defects inherent in the French political system and they attempted to stabilise the position of Premier, as much as they could. In fact, the position of the Premier, as Phillip William pointed out, "was the keystone of the constitutional settlement of October 1946."<sup>5</sup> The Reporter of the Constitution to the Second Constituent Assembly in 1946, could boast that the President of the Council of Ministers "has become a Prime Minister in the English sense." Actually, wrote F. Ogg, he had become "more than that—a head of the government, with powers at some points considerably transcending those of the British ministerial chief." But it was clearly not so. The Constitution prescribed that he exercised some of his powers with the countersignatures of one of the relevant Ministers. The

most important limitation in the exercise of his powers was political. In the absence of a coherent Ministry, the Premier could not become an effective leader and was never in a position to form a stable, strong and effective government.

The Constitution of the Fifth Republic creates the office of the Prime Minister and retains in essence some of the provisions of the 1946 Constitution which establish his supremacy and leadership as much as is compatible with the position of the President of the Republic and the collective character of the Government. He "directs" the operation of the Government and is "responsible" for national defence. He "ensures" the execution of the laws and exercises the rule-making power subject to the condition that all decrees and ordinances are signed by the President of the Republic.

The Prime Minister determines the composition of the Cabinet,<sup>6</sup> presides over its meetings, and directs the administrative services. He defends his policy before Parliament, answers questions addressed to him by members of Parliament, states the overall programme of the Government in special declarations and puts the question of confidence before the National Assembly.<sup>7</sup> He makes appointments to the posts which the President of the Republic is not specifically designated to appoint.<sup>8</sup> He presides over the councils and committees of the defence establishment in place of the President of the Republic when the occasion arises.<sup>9</sup> The Prime Minister may, in exceptional circumstances, take his place as chairman of a meeting of the Council of Ministers by virtue of an express delegation of authority and for specific agenda.<sup>10</sup>

The Prime Minister exercises legislative

1. Article 20.
2. Article 5.
3. Article 9.
4. Article 21.
5. Phillip William, *Modern Foreign Governments*, p.540.
6. Article 8.
7. Article 49.
8. Article 21 as read with Article 13.
9. Article 21 as read with Article 15.
10. Article 21 as read with Article 9.



initiative concurrently with the other members of Parliament.<sup>11</sup> Parliament assembles in an extraordinary session at the request of the Prime Minister or of the majority of the members composing the National Assembly, for a specific agenda. Only the Prime Minister may ask for a new session before the end of the month following the decree of closure of Parliament after the completion of the agenda for which it had been convened in extraordinary session.<sup>12</sup> Moreover, throughout the Constitution the Prime Minister is called for advice as specifically in cases of dissolution of the National Assembly<sup>13</sup> and in the use of emergency powers by the President of the Republic under Article 16.

#### The Cabinet and Collective Responsibility

The Government in France, like other parliamentary democracies, remains legally a collective organ and the decisions of the Government are the decision of all its members. Collective decision-making is implicit in Articles 13 and 20 of the Constitution. Article 13 provides that the President of the Republic shall sign the Ordinances and decrees that have been considered by the Council of Ministers. This nature of collective decision making is supported by Article 38 which provides: "The Government may, in order to implement its programme, request of Parliament authorization to take by ordinance, during a limited period of time, measures which are normally in the domain of law. Ordinances shall be enacted in the Council of Ministers after consultation with the Council of State." But Article 20 makes it abundantly explicit when it says that Government shall determine and direct national policy.

Article 20 associates collective decision-making with the collective responsibility of the Government. After stating that the Government determines and directs the policy of the nation, it also provides that the Government shall be responsible to Parliament. The Constitution prescribes three methods of enforcing Government's responsibility to Parliament. The first method is found in Article 49. It states: "The Prime Minister after discussion by the Council of Ministers shall commit the Government before the National Assembly to responsibility for its programme or possibly, for a general policy

declaration." The National Assembly can defeat the Government either on its programme or on a declaration of general policy and in such an eventuality the Government as a whole resigns and quits office.

Second, the National Assembly can defeat the Government by passing a vote of censure. The Constitution prescribes a definite procedure for moving a vote of censure and its consequential effects.<sup>14</sup> A motion of censure is required to be signed by at least one-tenth of the members of the National Assembly and the vote thereupon takes place not less than forty-eight hours after the motion had been introduced. Only those votes are counted that are favourable to the motion and the motion is considered adopted only if it is supported by a majority of all the membership of the Assembly. If the motion is defeated the signatories to the motion of censure which had been defeated cannot propose another motion censuring the Government for the rest of the session. But others, who had not been signatories to the defeated motion may propose such a motion of censure.

Third, the Prime Minister may, after discussion in the Council of Ministers, make an issue a matter of confidence. If he does so, confidence is presumed to have been accorded, and the proposal in question is presumed to have been carried without a vote being taken, if a motion of censure has not been moved within twentyfour hours. Such a motion of censure is subject to the same conditions as a motion of censure on the Government's policy. If the motion is lost, the proposal is carried. There is no limit to the number of censure motions that may be presented by the same members of the National Assembly on matters on which the Government has made questions of confidence.

There is one important difference between the two kinds of vote of confidence. If the Government seeks a vote of confidence, a simple majority of the members present and voting is sufficient to bring down the Government. If a vote of censure is moved against the Government an absolute majority of the total membership of the National Assembly is necessary to carry a vote of censure. The absolute majority

11. Article 39.

12. Article 29.

13. Article 12.

14. Article 49.



of the total membership of the Assembly renders the adoption of the vote of censure extremely difficult followed by a deterrent action that the signatories to the lost motion cannot move another vote of censure for the rest of the Assembly session.

When the National Assembly passes a motion of censure or rejects the programme or a general policy of the Government, the Prime Minister must submit to the President of the Republic the resignation of the Government.<sup>15</sup>

### Functions of the Cabinet

Whatever be the provisions of the Constitution with regard to collective decision-making and the responsibility of the Government as a whole to the National Assembly, the functions of the Cabinet became drastically modified under General De Gaulle as well as Giscard. Three reasons can be assigned for it. The first is the rule of incompatibility as provided in Article 23 of the Constitution. It states, "Membership in the Government shall be incompatible with the exercise of any parliamentary mandate, with the performance of any national function in a trade or professional organization, with public employment, or with any professional activity. An organic law shall determine the conditions in which the holders of such mandates, functions, or employment shall be replaced. Members of Parliament shall be replaced in a manner conforming to the provisions of Article 25." This Article was introduced in the Constitution at specific request of De Gaulle in his bid "to reduce the temperature of politics."<sup>16</sup> It forbids ministers to remain members of Parliament after they had been appointed to the Government. Whatever be the merits of this provision, it is, indeed, incongruous in the context of a parliamentary democracy. Government, in a parliamentary system, emanates from the majority Party in the representative Chamber and it remains in office so long as it can retain its confidence. It defends its policies and programmes on that basis of majority. It is true that members of the French Government do attend the meetings of both Houses of Parliament and participate in their deliberations without the right to vote,<sup>17</sup> but their simple participation is not enough for a parliamentary democracy if the representative Chamber is really to be the barometer of public

opinion. The representatives carry with them the mandate of the electorate expressed at the time of the General Election and they pursue their programme in accordance with that mandate. But the Constitution of the Fifth Republic prohibits it. De Gaulle had hoped that the rule of incompatibility would force Ministers to abandon their "politician's outlook and take a ministerial," presumably "statesmanlike", attitude on becoming members of the Government. This hope of De Gaulle, however, has not been realized. The procedure does not appear to have led to considerable variations in the attitude of the Ministers. For, though a Minister ceases to be a member of the Assembly or the Senate after his appointment, he does not eschew his membership of the Party to which he belonged. He has to fight election again after the expiry of his term of office as a Minister and for that he has to depend upon the Party if his reelection is to be ensured. He contests election on the ticket of a party, supports its programme and participates in party campaigns.

Then the Government is no longer composed of parliamentarians who simply resign their electoral mandate. Since 1958, more than one third of the Cabinet members have been civil servants, technicians, professors and intellectuals who had never been in Parliament and who had never desired to do so. De Gaulle attempted it to effect a "depoliticization" of the Government in order to bring about a change partly on the ground that the Government should in some sense be "above the daily turmoil of political life," and partly because the General conceived of politics "as an activity which somehow can be divorced from state policy-making." On coming back to power, in May 1958, and before the new Constitution was drafted, De Gaulle appointed to his Cabinet members of the civil, foreign and colonial services, a practice which had been abandoned, except in time of war, for over half a century, and placed these men in key positions. It had two effects. First, it vitiated the basic principle of a parliamentary system and, secondly, it was against the traditional, but universally recognized, maxim that the representative Chamber is the authentic expression of popular sovereignty. Cabinet cohesion and collective responsibility have no political utility in this context.

15. Article 50.

16. Blondell, Jean and Godfrey, E.D., *The Government of France*, p. 51.

17. Article 31.



In fact, both the non-parliamentarians and parliamentarians, as Macridis and Ward maintain, "who renounce their parliamentary mandate are therefore presumed to be independent of immediate political and electoral consideration, only, however, to become increasingly dependent upon the President, from whom they hold their ministerial position."<sup>18</sup>

The Cabinet is a deliberative and policy-making body. It discusses and decides all sorts of national and international problems confronting the country and thereby an attempt is made to reach unanimous agreements embodying Government's policy. It must present to Parliament and to the world unified policy of action if collective responsibility is to be fully realized. Meetings of the Council of Ministers under President De Gaulle were frequent and prolonged. Reports prepared by the Ministers or their aides were debated, but generally the discussion revolved "around the suggestions and directives of the President."<sup>19</sup> In contrast, the Cabinet meetings under the Prime Minister, wherein national policy would have been determined and for which the Constitution holds it responsible to Parliament,<sup>20</sup> had become rare. Instead, several inter-ministerial committees were set up "to implement the decisions reached in the Council of Ministers by President De Gaulle or at the Elysee."<sup>21</sup> The Cabinet had, thus, become a mere instrument for the execution of policy and in some matters, especially defence and foreign policy, it was "simply bypassed." Giscard followed his mentor, whose finance Minister he was. Mitterand, who inherited the Gaullist presidential system, tailor-made for his opponents, which he himself opposed because it gave the President too much power, has controlled his Ministers discreetly, with little of the direct meddling.

The only redeeming feature of the constitutional provisions is that ministerial instability that had plagued France throughout its parliamentary career has sharply decreased. The rule of incompatibility was designed to remove any temptation to overthrow the government and manipulate another. In the earlier Republics every Deputy was a prospective minister and every minister aspired to become a Prime Min-

ister without any qualm of conscience. Under the rule of incompatibility there is no possibility of a former minister, who had been ousted from office, again resuming his old seat in Parliament because that had been occupied by a substitute who had to be designated under the 1958 electoral law. It can, therefore, be said that the threat of losing a parliamentary position as a price of membership of government is real and effective. Moreover, the incompatibility of ministerial position with function of professional representation on a national level yields to the result that office-bearers of the labour unions or employers' federations or chambers of commerce or agricultural associations cannot become ministers. They have to resign their positions before joining the government in order to assume the role of statesmen.

In the first seven years of the Fifth Republic, France had only two Prime Ministers, Michel Debre (1959-62) and Georges Pompidou (1962-1968). Maurice Couve de Murville came in July 1968. In contrast, only two Premiers of the fourth Republic lasted for over a year and no Prime Minister since 1875 lasted continuously in office as long as Pompidou. The cabinet has shown also a corresponding stability. Only on three occasions there have been important reorganizations. Maurice Couve de Murville remained in charge of Foreign Affairs for about ten years to become Prime Minister in 1968. The Ministry of the Interior and Army were each headed by the same one Minister, respectively, for over six years. This is a "remarkable stability," observe Macridis and Ward, "that compares favourably, if not better, with the stability of the British or the American cabinet."<sup>22</sup>

### Parliamentary Control

Parliament supervises the work of the Government in three main ways. During sessions of Parliament, opportunity is provided for exchanges of opinions during debates. It is here that the Government comes under close scrutiny and its lapses or achievements come into limelight. Parliament is a place where matters are debated and society, writes Harold Laski, "that is able to discuss does not need to fight; and the greater the capacity to maintain interest

18. Macridis, Roy C., and Ward, Robert E., *Modern Political System: Europe*, p. 260.

19. *Ibid.*

20. Article 19.

21. Elysee is the official residence of the President of the Republic.

22. Macridis, Roy C., and Ward, Robert E., *Modern Political Systems: Europe*, p. 260.



in discussion, the less degree there is of an inability to effect the compromises that maintain social peace."<sup>23</sup> The most important function of the Opposition is to discuss and criticize matters of administration and policy-making and thereby to make the Government obliged to defend its intentions and practices. It must, however, be said that there must be a well-organised and strong Opposition to create an effective stir in the Government by its criticism.

But the main method of supervision in France is during the first stage of legislative procedure, by the examination of Bills in Commissions. All members of recognised parliamentary groups are members of a Commission, though not of more than one. The Commissions are parliamentary committees empowered to examine, discuss and report Bills before they can be debated in the Assembly and they have even been powerful engines of supervision and control very often leading the Government to wilderness. The Commissions can summon both the Ministers and the Civil Servants, examine them on matter being discussed before it and ask them to provide explanation and justification thereto.

In addition to the permanent Commissions, there are special Commissions too. A special Commission consists of thirty members, of whom not more than fifteen may be drawn from the same permanent Commission and a Bill may be sent to it for examination and report instead of one of the permanent Commissions. The Chamber may itself ask for this procedure to be adopted, and this has become the rule rather than the exception. There are also Commissions of Inquiry, similar to the Select Committees of the House of Commons, and Supervisory Commissions, which supervise the management and finances of the nationalised industries and public services.

Information about the transaction and affairs of the Government may be obtained by the

members of Parliament through the medium of either written or oral questions to the relevant Minister. Questions on general policy of the Government are addressed to the Prime Minister. Written questions are printed in the *Journal Officiel*. Ministers are required to reply to the questions addressed to them within a period of one month and their replies are printed in the *Journal Officiel*. They may, however, delay their replies for one month, and sometimes two, and may even refuse to reply on the ground that it would not be in the public interest to divulge the required information. If the reply to a written question is unduly delayed the Presiding officer of the Chamber may ask the member concerned whether he would prefer to put his question orally.

Oral questions are replied once a week at a sitting reserved for this purpose, and in the National Assembly it is on Fridays. Oral questions may be with or without debate. Questions without debate are called by the President of the Chamber and the member who is the author of the question is allowed to speak for five minutes and it is followed by the Minister's reply. No other speeches are allowed. Questions with debate are put by their authors in the course of a speech the duration of which may last up to half an hour. After the Minister concerned has given its reply, the President of the Chamber may allow other members to speak for a period not exceeding fifteen minutes in each case. The minister may give a final reply, if he so desired.

Finally, the motion of censure is really a potential device of controlling the Government. If the motion is accepted the Government resigns. But the framers of the Constitution of 1958 invented the technique of censuring the Government, as contained in Article 49, which is not only drastic but clumsy too, as pointed out earlier. Control of the Assembly and even discussion of policy is very limited indeed.

#### SUGGESTED READINGS

1. Blondel and Godfrey, *The Government of France*
2. Finer, S.E. *Comparative Government*, Chap. 7.
3. Macridis and Ward, *Modern Political Systems in Europe*.
4. Pickles, Dorothy, *The Fifth French Republic*

23. Laski, H. J., *Parliamentary Government in England*, p. 149.



## Parliament

## Parliament in Retrospect

The Parliament of Fifth Republic is, as in the past, bicameral, consisting of the National Assembly and the Senate. The Upper House, the Senate, has regained its title, which it had lost in the 1946 Constitution, but not all the powers, which it had under the Third Republic. The Lower House, the National Assembly, has kept its name which the Constitution of 1946 had given it. Bicameralism has a chequered history in France. During the three-quarters of century after the Revolution, France had a series of Constitutions, some of which provided for a single chamber legislature and some for two chambers. "There was no fixed tradition", as Munro observed, "but, in general, the monarchists preferred the bicameral system while the republicans felt that one chamber was enough."<sup>1</sup> Hence the Third Republic began its career with a single chamber legislature, called the National Assembly.

But the National Assembly was not merely a legislative body, it was also a Constituent Assembly. The National Assembly was sharply divided whether the new constitution should provide for one legislative chamber or for two. The anti-republicans, the monarchists, the imperialists and other conservatives, who formed an influential majority in the Assembly, were by no means reconciled to the republican form of government. They entertained a fear that a single elective chamber "might too easily be stampeded" and in order to check the turbulence of democracy they desired to set up a conservative Senate with effective powers, the same motives which, *inter alia*, swayed the framers of the American Constitution. They ultimately triumphed and the National Assembly agreed to provide for a bicameral legislature in the Constitution of the Third Republic. Because of the lengthy term of office (elected for nine years, one-third retiring every three years), the tradition of reelecting outgoing members, and the higher average age of the Senators, the Senate proved to be a sober and dignified body and as it was natural influence went with seniority.

It attracted the ablest politicians and seasoned statesmen which increased its authority and attractiveness at the cost of the representative chamber, the Chamber of Deputies.

The Senate possessed co-equal powers with the Chamber of Deputies. But it rarely rejected Bills outright. Those it disliked were simply buried in committees from which they never emerged. In the beginning, the Senate did not challenge Governments. The provisions of the Constitution were vague regarding the responsibility of the Government. Custom rather than the law, however, became the decisive factor and the Senate was responsible for dismissing two Ministries before 1914 and a third in 1925. In the last ten years of the Third Republic it dismissed four.

When the collapse of 1940 occurred, the two chambers sitting together as a National Assembly voted themselves out of authority and abdicated their powers in the hands of Marshal Petain thereby signing the death warrant of the Third Republic. After the liberation, provisional government was set up in Paris with General De Gaulle at its head, aided by a ministry and a consultative assembly. The first constitution, which was submitted to a referendum of the people in May 1946, and rejected, contained no second chamber at all. The Socialists and the Communists combined together and refused to compromise in this matter. While no considerable group desired a restoration of the old Senate, as it had functioned under the Third Republic, there was nevertheless a widespread feeling that some kind of upper chamber was desirable.

In the Second Constituent Assembly the battle was fought out between the Radicals and their supporters who favoured a virtual return of the old Senate. M. R. P., like De Gaulle, wanted a broadly corporate chamber, representing colonial and professional interests as well as local authorities. The Communists and the Socialists preferred no second chamber at all, but recognizing that there must be one if the constitution was to be accepted at the poll, it

1. Munro, W. B., *The Government of Europe*, p. 397.



must be feeble and submissive. The Constitution of 1946, therefore, provided for two chambers, the national Assembly and the Council of the Republic, a shadowy bicameralism indeed. The framers of the constitution had intended the Council of the Republic to act simply as "a council of reflection", and not a "council of action" M. Paul Coste-Flôret, General Reporter on the Constitution, while summing up the legislative structure established for the Fourth Republic, maintained that it was one of "incomplete bicameralism" or of "tampered mono cameralism."

The Senate under the 1958 Constitution is indirectly elected for a term of nine years, one-third retiring after every three years. Except for age, which is 35 years for the Senators, other qualifications are the same for candidates seeking election to this Chamber as those required for election to the National Assembly, including the obligation to name a substitute. The National Assembly is a representative chamber elected for a term of five years by universal suffrage. General De Gaulle conceived the Senate as the Chamber whose detachment and wisdom would provide for a balance against the National Assembly. While deprived of the right to overthrow the Cabinet, the Senators were given an ironclad vote over legislation if the Prime Minister and the Government desired it.<sup>2</sup> The two Chambers have equal powers, except that the budget originates in the National Assembly. The Senate cannot introduce a vote of censure, the cabinet is responsible only to the National Assembly. In case of persistent disagreement between the two Chambers, which had not been resolved even at their joint conference, the Prime Minister may ask the National Assembly to rule "definitively."

Unlike the British monarch and the President of India, the French President under the Fifth Republic is not a component part of Parliament. Article 24 of the Constitution states that Parliament "shall comprise the National Assembly and the Senate." This provision is comparable to the Constitution of the United

States. Article I provides, "All legislative powers, herein granted, shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." But unlike the American President, the Constitution of France vests in its President significant legislative powers.

#### A "Rationalised" Parliament

In order to bring about a change in the behaviour of parliamentarians, the framers of the 1958 Constitution created a "rationalised" Parliament in an effort to enhance the position of the Government and remove the defects of "Assembly Government" as experienced during the previous two Republics. Their object was to limit Parliament to the performance of its proper functions of deliberation and supervision and not of blocking executive action, that is, to protect the executive from "legislative encroachments."<sup>3</sup> The Constitution, accordingly, deals with legislative procedure in much more details than previous Constitutions had done. "A number of matters traditionally left for Parliament to decide are now constitutionalized."<sup>4</sup> Parliamentary Standing Orders, for example, must be found in accord with the Constitution by the Constitutional Council before they become effective. Only two sessions of each Parliament are to be held on dates specified in the Constitution and their duration has also been determined by the Fundamental law.<sup>5</sup> Extraordinary sessions may take place on the request of the Prime Minister or of the majority of the members of the National Assembly "on a specific agenda."<sup>6</sup> They are convened and closed by a decree of the President of the Republic,<sup>7</sup> who, it appears now, seems to have the last word on whether to convene an extraordinary session or not, despite the terms of the Constitution. The number of Parliamentary Commissions has been reduced and their functions are carefully curtailed.<sup>8</sup> The Government now determines the order of business in a Chamber,<sup>9</sup> and Parliament can legislate on matters defined in the Constitution.<sup>10</sup> Matters

2. Chap. III *ante*.

3. Macridis, Roy C. and Ward, Robert E., *Modern Political Systems: Europe*, p. 261.

4. Pickles, Dorothy, *The Fifth French Republic*, p. 89.

5. Article 28.

6. Article 29.

7. Article 30.

8. Article 43.

9. Article 48.

10. Article 34.



other than those defined in the Constitution are subject to the rule-making power of the Government.<sup>11</sup> Annual election of the President of the National Assembly has been changed into the whole legislative term and the Senate elects its President every three years. Both the Presidents, therefore, no longer depend upon the mercy of the Chambers every year. This provision has enhanced the prestige and authority of the presiding officers and ensures their independence and impartiality. The Government is empowered to reject all amendments and to demand a single vote on its own text with only those amendments that it accepts.<sup>12</sup>

By constitutionalizing the procedural rules, the framers of the Constitution made a genuine effort to correct some of the more flagrant abuses of the past, to diminish the opportunities of conflict in the general organization of Parliament, and to reduce possibilities of "guerrilla and open warfare" during the debates over general legislation. The process and operation of censure motions have been severely restricted<sup>13</sup> and the classic procedure of the "interpellation" abolished. The extended power of dissolution<sup>14</sup> given to the President of the Republic makes the members of the National Assembly less disposed to show vindictiveness against the Government "if they know that they might rock their own boat trying to sink the executive ship."<sup>15</sup> Finally an overall control of parliamentary activity is provided by the possible intervention of the Constitutional Council.<sup>16</sup>

Thus, the constitutional provisions and Parliamentary Standing Orders are designed to weaken the Parliament and to strengthen and enhance the influence and prestige of the Executive. The powers of the National Assembly have, in the last analysis, diminished in relation to the Government and its prestige has suffered in relation to the Senate. In the Fourth Republic, the Senate, renamed the Council of the Republic, had no overriding power to legislation. The framers of the 1958 Constitution increased the powers of the Senate and magnified its position especially by giving the authority to veto

all Bills if the Government so desired.

### Restrictions on Parliament

The Constitution of 1958, like its predecessor Republican Constitution, establishes a secular, democratic and social Republic<sup>17</sup> and proclaims that sovereignty belongs to the people "who shall exercise it through their representatives and by way of referendum."<sup>18</sup> The authentic expression of popular channels are, therefore, the institutions of Parliament and the referendum. The Parliament is not the only institution to express it and its will can be negated by the people themselves at a referendum. Referendum, accordingly, cancels the proposition that the Parliament is the manifestation of the will of the people and mirror of their sovereign power. But the most important innovation of the Constitution of the Fifth Republic is the restrictions imposed on the jurisdiction and scope of activity of the Parliament. Through the device of a "rationalised" parliament, a deliberate attempt was made by the framers of the Constitution to diminish the powers of the National Assembly in relation to the Government and undermine its prestige in relation to the Senate, not a popularly elected Chamber.

### Functions of Parliament

The Constitution describes and defines the functions of Parliament and they are distinctly three in number. Its legislative functions are defined in Article 34 and extend to:

"the rules concerning civil rights and the fundamental guarantees accorded to citizens for the exercise of civil liberties; the obligations imposed for national defence on the persons and property of citizens; nationality, status and legal capacity of persons; marriage agreements; inheritance and gifts; determination of crimes and misdemeanours as well as the penalties applicable to them: criminal procedure; amnesty; the creation of new types of jurisdiction and the status of the judiciary;

the basis, rate and method of collecting taxes of all kinds; the currency system;

the electoral systems for the Houses of Parliament and the local assemblies;

11. Article 37.

12. Article 44.

13. Article 49, Chap. IV *ante*.

14. Article 12.

15. Blondell, Jean, and Godfrey, E. D., *The Government of France*, p. 60.

16. Article 61. Chap. II *ante*.

17. Article 2.

18. Article 3.



the creation of categories of public corporations;

the fundamental guarantees accorded to the civil and military personnel of the State;

the nationalization of enterprises and the transfer of the property of enterprises from the public to the private sector;

(and the) fundamental principles of:

the general organization of national defence: the free administration of local entities, the extent of their jurisdiction and of their resources;

education;

property rights, civil and commercial obligations;

legislation pertaining to employment, unions and social security."

After enumerating the legislative scope of Parliament Article 34 provides: "The provisions of the present article may be elaborated and completed by an organic law." It means that this enumeration of legislative power cannot be enlarged except by an organic law, that is, a law passed by an absolute majority of members of both Houses of Parliament. Organic laws are promulgated only when the Constitutional Council has declared that they are in conformity with the Constitution. Article 37 makes this point clear. It states: "Matters other than those which are in the domain of law shall be subject to the rule-making power." It goes even further and adds, "Documents in the form of laws, but dealing with matters falling within the rule-making field, may be modified by decrees issued after consultation with the Council of State." Thus, laws enacted under the Fourth Republic dealing with matters that are declared by the Constitution of 1958 to be beyond the competence of Parliament can be modified by a decree. They are, therefore, "delegalized."

Apart from the rule-making power of the executive, the Government may also with the permission of Parliament, take over, for a limited period, responsibility for dealing with matters defined by the Constitution in Article 34 as properly belonging to Parliament. Article 38 prescribes: "The Government may, in order to implement its programme, request of Parliament authorization to take by ordinance, during a limited period of time, measures which are normally within the domain of law."

There is nothing exceptional or extraordinary in authorizing the executive to make rules and regulations in pursuance of authority delegated to it, or to issue decrees or promulgate ordinances. Such had been the practice in the Third and Fourth Republics. But all such decrees or ordinances were temporary measures devised for exceptional circumstances or to meet exceptional conditions. All the same, supremacy of Parliament was kept intact. Parliament remained the final judge of the extent and duration of special powers accorded to Governments to legislate by decrees. And to crown this, such decrees were subject to ratification by Parliament. But under the Constitution of the Fifth Republic the legislative scope is neatly defined and beyond that the Government deals by executive action and may even take over, for a limited period, with the permission of Parliament responsibility for dealing with matters defined by the Constitution as properly belonging to the domain of law and, accordingly, within the competence of Parliament itself. This is, really, unprecedented. Moreover, to define a 'legislative sphere' is really the first serious attempt in French Republican history. "The legislative domain," as Dorothy Pickles remarks, "was, up to 1958, anything claimed by Parliament as such."<sup>19</sup> There may be a reasonable justification in the arguments that by curtailing the legislative sphere the intention was to remove the disabilities of the Third and Fourth Republics when the Government had to fight inch by an inch to survive, but this is no answer to the question. By strictly limiting its legislative sphere Parliament has lost its incentive to efficiency and reduced its capacity to adequately control and supervise the executive.

With regard to budget and financial bills the 1958 Constitution "consecrates the 'executive budget'," as Macridis and Ward remark.<sup>20</sup> The procedure for voting finance bills is designed to prevent the National Assembly from using delaying tactics as it did under the Fourth Republic. The finance bill is submitted by Government to Parliament. Proposals emanating from members of Parliament are out of order if their adoption entails either a reduction in public revenues or an increase in public expenditure.<sup>21</sup> Article 47 prescribes the procedure for enacting the finance bill. If the National As-

19. Dorothy Pickles, *The Fifth French Republic*, p. 101.

20. Macridis, Roy C., and Ward, Robert E., *Modern Political Systems: Europe*, p. 263.

21. Article 40.



sembly does not complete the first reading of the Finance Bill within forty days, the Government sends the Bill to the Senate to be read within two weeks. If the Senate does not vote it within seventy days the Government may promulgate and put into effect its provisions by ordinance. If the Government has failed to introduce the Finance Bill in time to be promulgated before the beginning of the financial year, it may ask Parliament to authorize taxation by decree and to authorize expenditure in respect of any estimates previously accepted by the National Assembly.

Whatever be the merits of procedure prescribed for voting Finance Bills, it is really unimaginable to think of "executive budget" in a Republican Government and by-passing Parliament in case its two Houses fail to reach an agreement.<sup>22</sup> And agreement between two Houses on fiscal matters is as undemocratic as an "executive budget." A representative Chamber in all democratic countries is the embodiment of popular sovereignty and an arbiter of financial matters. The origin of Parliament can, indeed, be found in the old but ever resplendent democratic axiom: no taxation without representation and that had been the course of history in every democratic country.

The Constitutional Council limits the authority of Parliament in three ways. Firstly, the Constitutional Council "regulates the regularity" of election of the Deputies and the Senators and ensures the regularity of referendum procedure and declares results thereof.<sup>23</sup> Both these cases fall within the traditional domain of the Parliament and, as such, diminish the authority of that body. Secondly, Parliamentary Standing Orders, which determine the legislative procedure and are the legitimate right of legislative assemblies, are required to be submitted to the Constitutional Council, before they become operative, and decision obtained there from about their conformity to the Constitution.<sup>24</sup> Finally, my Deputies and Senators have questioned the impartiality of the Constitutional Council, particularly on matters relating to specific disputes arising between Government and Parliament with a view to ensure that each organ of Government keeps within the sphere of its own jurisdiction. All

this in effect have further added to the restrictions imposed by the Constitution on the powers and jurisdiction of Parliament. The decisions of the Constitutional Council, remarks Dorothy Pickles, "during the first years of the regime were, in fact, always restrictive of what parliament held to be its rights. The Constitutional Council played a not unimportant part in bringing about the worsening of relations between Government and Parliament which became one of the most characteristic features of the regime."<sup>25</sup>

#### Privileges of Members

Members of Parliament enjoy certain privileges. No member of Parliament can be prosecuted, sought out, arrested, retained or tried on account of opinions expressed or votes cast by him in the performance of his functions. No member of Parliament may be prosecuted or arrested on criminal or misdemeanour charges during sessions of Parliament without authorization of the House of which he is a member, except in case of *flagrante delicto* (in the very act).<sup>26</sup> In the latter cases (when caught *flagrante delicto*) he may be arrested, though the House is still free to stop proceedings. When Parliament is not in session, a member can be arrested only with the authorization of the bureau of the House to which he belongs, except in cases where the arrest is *flagrante delicto*, or where a court has made a final finding, or where arrest had been authorized in a previous session.

#### Obligations of the Members

The Constitution also prescribes certain obligations of the members of Parliament. Certain occupations are incompatible with membership of Parliament. Most of such incompatibilities were also present in the Third and Fourth Republics. The Constitution of the Fifth Republic has added to this list and, among others, include directorship of nationalised and State subsidised concerns, or of concerns carrying out public-works contracts, legal representation of concerns involved in actions against the State. In all these cases the member's resignation is followed by a by-election.

Article 27 prohibits mandatory instructions to members of Parliament. The same Arti-

22. Article 59.

23. Article 60.

24. Article 61.

25. Dorothy Pickles, *The Fifth French Republic*, p. 107.

26. Article 26.



cle also prohibits members from voting by proxy. The voting right of members of Parliament, it says, is personal. Under the Fourth Republic absenteeism was a regular feature and proxy voting used to be general. Either one member of the group cast the votes for whole group, or members of a group handed over their signed voting papers to one or more proxies, who voted on their behalf. "One result of this system was that debates which were in actual fact conducted before almost empty benches could be followed by votes including upwards of 75 per cent of the membership of the House."<sup>27</sup> The Constitution of the Fifth Republic has attempted to change all this. A member of Parliament may now delegate his vote for five reasons, duly notified in writing in advance.<sup>28</sup> They are: absence from a sitting on grounds of illness, accident or family circumstances; absence on a Government mission or on military service; absence from France on the occasion of a special session of Parliament; or due to representation of the Senate or Assembly at a meeting of an international Assembly. No single member can cast more than one proxy vote at a time.

The Constitution also requires that members must vote regularly. The salary of the members is now divided into two parts: the basic salary, and an 'attendance bonus'. The exact nature of determining the 'attendance bonus' and the manner by which members are to be penalized for non-attendance is decided by each House itself. The Standing Orders of the National Assembly provide that absence from three consecutive Commission sittings without valid reasons entails the resignation of the member concerned from the Commission and a loss of a third of the attendance bonus, until the opening of the following session of the Assembly in October. Absence without valid reasons from more than a third of the votes by ballot in any month entails the loss of one-third of the monthly attendance bonus. If a member absents himself from exercising votes personally, he forfeits two thirds of his attendance bonus.

#### GENERAL ORGANIZATION OF PARLIAMENTARY BUSINESS

##### Sessions of Parliament

Parliament now meets on fixed dates and

for a fixed duration. Article 28, as amended in December 1963, provides for two regular sessions, the first beginning from October 2 and it lasts for 80 days. The second session opens on April 2 and its duration is not to exceed ninety days. Parliament, therefore, now sits for a maximum of less than six months in a year whereas under the Fourth Republic it sat for a minimum of seven months. The first session beginning in October deals mainly with the budget and the second with the legislative programme. Extraordinary session is held at the request by the President of the Republic, or the Prime Minister or of a majority of the members of the National Assembly, for a specific agenda. If the extraordinary session is held at the request of a majority of members of the Assembly, the session must be closed as soon as the specific agenda has been completed and, in any case after a period not exceeding twelve days.<sup>29</sup> In addition, Parliament meets on two occasions, after an election, for a special session of up to a fortnight, and during a period of application of Article 16, when it is entitled to sit for the duration of the emergency.

##### Presiding Officer

Each House elects its bureau, at the beginning of the October session, consisting of its President, Vice-Presidents (six for the Assembly, and four for the Senate), Secretaries (twelve for the Assembly and eight for the Senate) and the *Questeurs* (three for each House). The Secretaries supervise the production of the official records and check the votes. The *Questeurs* are responsible for administrative and financial arrangements. The functions of the *bureau* as a collective body are to organize and supervise the different services in the House, and if required to assist the Presiding officer on a number of points, particularly on disciplinary matters and the admissibility of Bills or resolutions.

The Presiding officer (President) of each House is elected at the first meeting of the session. Formerly elected annually, the President of the National Assembly is now elected for the duration of the House. The President of the Senate is, however, elected after each partial re-election of the House; after every three years. The President of the Senate now performs the

27. Dorothy Pickles, *The Fifth French Republic*, p. 91.

28. Article 27 provides, "Organic law may, in exceptional circumstances, authorize proxy voting. In that case no one may exercise more than one proxy."

29. Article 29.



functions of the President of the Republic if incapacitated, and not the President of the National Assembly as heretofore.

In the main, functions of the two Presidents are similar. But neither of the two approximates the Speaker of the House of Commons. They resemble the Speaker of the House of Representatives more or less. Though of necessity impartial in the actual conduct of debate, "they do attempt to influence, by informally talking to members, the conduct of business."<sup>30</sup> Before 1958, these offices were stepping stones to the Presidency. Vincent Auriol was the President of the National Assembly when he was elected President of the Republic.

The 1958 Constitution vests in both the Presidents certain specific powers. The Presidents of the National Assembly and the Senate must be consulted by the President of the Republic as to the existence of an emergency as defined in Article 16. A private member's Bill, resolution or amendment which the President of the House holds to be constitutional, but the Government challenges it as unconstitutional, must be either submitted by him to the Constitutional Council or ruled out of order."<sup>31</sup> Under the Standing Orders of the Assembly and the Senate the Presidents of both the Houses enjoy somewhat more discretion than their predecessors under the Third and Fourth Republics, particularly in calling members to order, and in calling for the closure of the debates.

The Parliamentary timetable is drawn up every week by *la Conférence des Présidents*, a meeting of the President and Vice-Presidents of the Assembly, and of heads of Parliamentary groups, Presidents of Commissions, and the *rapporteur general* (Reporter General) of the Finance Commission. Voting in this body is weighed in proportion to party strength. Previously, the prestige of the Government and the extent of its persuasiveness influenced its decisions. The Constitution of 1958 now gives the Government effective control over the timetable by giving priority to Government Bills and to those Private Members' Bills acceptable to the Government.<sup>32</sup>

In France there exist quite a number of Parliamentary groups not always classified as belonging definitely to Government or to Opposition side. French Parliamentary procedure has been taking into account the existence of such Parliamentary groups. But only organized groups, that is, groups with membership of 30 or more are now represented at the *Conférence des Présidents* and on the Parliamentary Commissions into which each House is divided for purposes of legislation. The traditional method of evading the regulations of minimum membership, by tacking on a number of isolated members or small groups for administrative purposes, is now prohibited. Groups are now represented on Commissions in proportion to their strength in the House, including affiliates (apparentes-affiliated members or groups). If there remain any more vacancies after seats have been allotted to groups, isolated members can become members of Commissions provided they are elected by the whole House.

#### LEGISLATIVE PROCEDURE

##### How a Bill Becomes Law

Bills may be introduced in either of the two Houses of Parliament and have their first reading in the House where they originate, except for finance Bills which must be submitted and read first in the National Assembly.<sup>33</sup> The legislative initiative is exercised concurrently by the Prime Minister and by the members of Parliament.<sup>34</sup> Private members' Bills are not in order if they involve a decrease in public revenues or the creation or increase of public expenditure.<sup>35</sup> If it appears in the course of legislative process that a Private member's Bill, or amendment thereto is not constitutional, the Government may request the President of the House to rule it out. In case of disagreement between the Government and the President of the House concerned, the Constitutional Council, at the request of either the Government or President of the House, gives a ruling thereupon within one week from the date of its reference.

Immediately after the introduction of the bill, it is sent to one of the six Commissions (committees) of the House, or, on the request of

30. Blondell, J., and Godfrey, E. D., *The Government of France*, p. 63.

31. Article 41.

32. Article 48.

33. Article 39.

34. *Ibid.*

35. Article 40.



either Government or the House itself, to an ad hoc Commission. The Commission discusses the bill, may adopt it, dismiss or amend it. Each Bill has a *Rapporteur* from the Commission who reports it to the House, which discusses the Bill first in general, then article by article and votes on each article. There is then a final vote on the Bill as a whole, as amended. This completes what is called the first reading. It then goes to the other House, which follows the same procedure. If both Houses agree on the same text, the Bill is sent to the President of the Republic within fifteen days of its transmission to the Government. The President has no veto power, but he possesses a sort of suspensive veto. Article 10 provides, "He may, before the expiration of this limit (fifteen days), ask Parliament for a reconsideration of the law or of certain of its articles. This reconsideration may not be refused." It is, however, very rare that the President asks for reconsideration of the Bill by Parliament, but if asked for it is normally on the ground of technical errors which had been overlooked by Parliament.

In case of disagreement between the two Houses of Parliament, the Bill is read for the second time in each House. If the disagreement still continues, a joint committee of the two Houses, comprising an equal number of members of each House, is set up with a view to proposing a common text for the provisions on which disagreement remains. The text prepared by the joint committee may be submitted by the Government for approval of the two Houses. No amendments are in order unless the Government agrees thereto.

If the joint committee does not adopt a joint version, the Government may, after a new reading by the National Assembly and the Senate, ask the National Assembly to rule definitely. In that case, the National Assembly may take either the version prepared by the joint committee, or the last version passed by the Assembly, modified as appropriate by one or more of the amendments adopted by the Senate.<sup>36</sup> If the Government does not intervene and ask the Assembly to rule definitely, the Bill dies. The Senate, thus, possesses a veto power

over the National Assembly, if the Government so desires.

### Financial Procedure

The voting of finance is subject to special procedure laid down in the Constitution. The procedure is designed to prevent the Assembly from using delaying tactics. Before 1958, French Parliaments were notorious for their delaying action in respect to the budget. As Jean Blondell and Godfrey point out, "...; indeed, the budget was customarily one of the hurdles which few Governments passed safely, and this in turn increased delays, as a new Government had to be formed and rethink the budget before the finance bill could be approved."<sup>37</sup> In order to redress this situation, the Constitution of 1958 consecrates the "executive budget." The budget is submitted by the Government first to the National Assembly. Proposals stemming from members of Parliament "are not receivable if their adoption would result in a reduction in public revenues or the creation or increase of public expenditures."<sup>38</sup>

The Constitution of 1958 prescribes a limit of forty days within which the National Assembly must complete the first reading of the Finance Bill. If it does not vote within the specified period, the Government sends the Bill to the Senate to be read within two weeks. If the Bill has not been voted after seventy days, the Government becomes entitled to promulgate the Finance Bill by Ordinance.<sup>39</sup> If the Government has not submitted the Finance Bill in time to be promulgated before the beginning of the fiscal year,<sup>40</sup> it may ask Parliament to authorize taxation by decree and to authorize expenditure in respect of any estimates previously accepted by the National Assembly.<sup>41</sup>

It may be noted that the Finance Bill is voted by both the Houses of Parliament. The Constitution only requires that it should be voted first by the National Assembly.<sup>42</sup> There is no law in France, fundamental or organic, which empowers the National Assembly to override the Senate, as the House of Commons can do in Britain. If the National Assembly and

36. Article 45.

37. Blondell, J., and Godfrey, E. D., *The Government of France*, p. 71.

38. Article 40.

39. Article 47.

40. Financial year ends on 31st December in France.

41. Article 47.

42. Article 39.



the Senate disagree, the procedure for resolving the difference between the two Houses is the same as governing disagreement on an ordinary Bill.<sup>43</sup>

### The Committee system

Until the Constitution of the Fifth Republic became operative in 1958 the legislative committees in France were engines of power and control and were often in conflict with the Government. They decided the fate of virtually any Bill by amending it, pigeonholing it, or failing to report it. Only the amended text of a Bill could come from the Committee to the floor of the Assembly. And when it reached there, the *Rapporteur* (reporter) of the Commission piloted the Bill and took the lead in the debate and was usually the first on the tribune. He intervened at any time in debate and would make his chief contribution at a point favourable to the success of the debate and the work of the Committee. It would very often even mean vigorous criticism of the Government, for Committee Chairmen and Rapporteurs were potential candidates for ministerial office. "The leaders of the committees," observed Philip Williams, "had an evident interest in opposing the Government: and the greater the prestige and solidarity of their committee, the likelier they were to succeed."<sup>45</sup>

This situation has dramatically been altered by the Constitution of 1958. Article 43 limits to six the number of permanent Committees in each House.<sup>46</sup> They formerly numbered 19, each having 44 members. The purpose sought in reducing the number of Committees is twofold. First, to reduce the authority of the Committees, whose Presidents when the field of activity of the Committees coincided with that of a Ministry, tended to become shadow Ministers. Secondly, in pre 1958 Parliaments a Bill, whose scope was such as to interest more than one Ministry, was submitted to many Committees and it was a time consuming process. For instance, the bill to ratify the E.D.C. Treaty in 1954 was submitted to the Foreign Affairs Committee to report, and also to four other Committees for their opinion. The reduction in the number of the Committees now aims to prevent the time-wasting process, although the Standing Orders also provide for the practice of

submitting Bills to more than one Committee.

The composition of the six regular Committees varies from 60 to 120 members, nominated to represent proportionately the political parties. Only organized groups, with thirty members or more, are now represented on the Committees. Isolated members can become members of Committees only if elected by the whole House to any vacancies remaining after the seats have been allotted to group members. The composition of the Committees has, thus, become more compact and responsible. They no longer remain subject to the vagaries of the unaffiliated groups and isolated members.

The Committees receive the Bills, examine them, hear the Minister, and suggest changes. But the Government has the last word on bringing the Bills on the floor of the House and on accepting or rejecting the amendments made. Article 42 states that the discussion on the floor of the House has to take place on the Government's text. The procedure followed is that debate on a Government Bill begins with a ministerial declaration and, then Committee's report is presented. Formerly, the debate took place on the basis of the Committee's amended text and not on the Government's Bill, and the *Rapporteur*, not the Minister, was responsible for piloting the Bill through the House. The 1958 Constitution has changed all that and the result is that the legislative work has been expedited and improved in many respects, while the Government no longer remains at the mercy of Committees that were often inspired by parochial considerations.

### Relations between the two Houses

Both the Houses possess identical powers, except that the Finance Bill has its first reading in the National Assembly. The 1958 Constitution does not permit the Assembly to override the Senate, as it could under the Constitution of the Fourth Republic, unless the Government decides to intervene on the side of the Assembly. In other words, the Senate has been given veto over legislation if Government so desires. If the Government does not intervene, a Bill on which both the Houses disagree can shuttle between the national Assembly and the Senate indefinitely. Moreover, Article 45 does not provide for putting an end to persistent dis-

43. Article 45.

44. Philip Williams, *Politics in Post-War France*, p. 238.

45. They are: Foreign Affairs; Finance; National Defence; Constitutional Laws, Legislation, and General Administration; Production and Trade; and Cultural, Social, and Family Affairs.



agreement between the two Houses. The Joint Committee of the two Houses set up at the request of the Prime Minister in case of disagreement deals only with articles on which agreement has still not been reached, that is, provisions on which disagreement remains.

If the Government intervenes, "it may do either passively or actively." In the former case, the Prime Minister may, after the Bill has been read twice in each House, ask for setting up a joint committee composed of equal number of members from each House. If the joint committee reaches an agreement the version prepared by it is then submitted by the Government for approval by the two Houses. No amendment is in order without the Government's agreement. If the Joint Committee does not agree, or if the version of the Committee is rejected by either House, the two Houses may make further efforts to agree or drop the Bill, or shelve it. But if the government intervenes actively, the Government may ask the National Assembly to rule definitely thereon; if the disagreement still persists. In order to override the Senate the Assembly requires only an ordinary majority vote on the Bill, unless it is organic.

All this means that in case the Government is not interested in the enactment of a legislative measure, the Senate can effectively block legislation. The relationship between the two Houses, then, assumes the same form as it existed between the two Houses under the Constitution of 1875, that is, both Houses of Parliament possessing co-ordinate powers,

independent and equal to each other.

The Senate does not control the executive and the Government is responsible to the National Assembly alone. Obviously a subordinate chamber, it really possesses co-equal legislative powers with the National Assembly and exercises an effective right of veto over any change in its status. In fact, the Senate's position has considerably been improved and its authority increased by the 1958 Constitution. The President of the Senate replaces the President of the Republic; if incapacitated, until the new President is elected. It is the constitutional duty of the President of the Republic to consult the President of the Senate before the application of emergency measures under Article 16, and on the desirability of dissolution. The President has the right to submit certain Bills in certain circumstances to the Constitutional Council, and, like the President of the National Assembly, to nominate three members to the Constitutional Council. The Senate has the right to equal representation with the Assembly in the High Court of Justice. The National Assembly needs the concurrence of the Senate before requesting a referendum. Finally, the Senate has the right to receive Presidential messages from the President. Article 18 provides: "The President of the Republic shall communicate with the two Assemblies of Parliament by means of messages, which he shall cause to be read and which shall not be an occasion for any debate."

#### SUGGESTED READINGS

Ambler, J.S., *The French Army in Politics.*

Ardagh, J., *The New French Revolution.*

Aron, Raymond, *France, Steadfast and Changing.*

Avril, P., *Politics in France.*

Campbell, P., *French Electoral Systems.*

Crawley, A., *De Gaulle.*

Ehrmann, H.W., *Politics in France.*

MacRae, D., *Parliament, Parties and Society in France.*

Pickles, Dorothy, *The Fifth French Republic.*

Thomson, D., *Democracy in France.*

Williams, P.M., *The French Parliament.*