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**Constitutionalism in France: How can Gaullism and the French Popular Front be incorporated into the narrative of French Constitutional history?**

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It is very common to refer to the division between Parliamentary Democracy and Presidential Democracy among Political Scientists especially when dealing with the definition of modern democracies<sup>1</sup>. Most of the time, the original model of the Parliamentary Democracy refers to Great-Britain and its tradition based on the Sovereignty of the Parliament and the model of a Presidential regime refers to the US Constitution. One can wonder how difficult is to put France into that frame. But instead of considering the French case as a failure or as a misleading route, it can be seen as an original example of a country which had experienced over time the two different types of democracies. Thus, French political history provides the most interesting example of a modern constitutional evolution in comparison with other countries because it is the unique case of so sharp a contrast between one experience of Parliamentary democracy (roughly the Third and the Fourth Republic) and of Presidential democracy (the Fifth Republic). More than that, in many ways, the type of Parliamentary democracy that France had embodied was radical in its use of deliberative politics and by resorting to the freedom of votes<sup>2</sup>. Likewise, the type of Presidential politics brought by the new Constitution of 1958 had pushed very far the restrictions on parliamentary liberties and the strengthening of the Executive Power (both the power yielded to the Prime Minister and the power bestowed on the President of the Republic). In short, when the fragility of partisan discipline had been the curse of the Third and the Fourth Republic, being one of the causes of such dramas as the defeat of 1940 and the Algerian War, the stability of the government which can be seen as the most spectacular achievement of the Fifth Republic became, in its turn, a source of a fragile freedom of speech and an impoverishment of the deliberative process within the parliamentary assemblies.

In this respect, it is worth revisiting the history of the passage from the Parliamentary Republic to the Presidential Republic in France. Most of the studies dedicated to constitutional issues have been written by jurists, lawyers and constitutionalists and the question of the transformation from the Parliamentary republic to a presidential regime is no exception to the rule. They have given the priority to the comment or to the exegesis of written texts and legal rules that is to say on every document which produces legal norms. For instance, they have produced at length comments on the case law of the Council of State

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<sup>1</sup> See: Arend Lijphart, *Patterns of Democracy: Government forms and performance in thirty-six countries*, New haven, Yale University Press, 2012.

<sup>2</sup> I dare to refer here to my book : Nicolas Roussellier, *Le Parlement de l'éloquence. La souveraineté de la délibération au lendemain de la Grande guerre*, Paris, Presses de Sciences Po, 1997.

(*Conseil d'Etat*) as well, more recently, of the Constitutional Council (*Conseil Constitutionnel*). Political scientists, for their part, have put the stress on the peculiarities of the new political system that was fostered by the advent of the Fifth Republic in 1958. The first decade of the Fifth Republic, during the 1960's, had coincided with the gilded age of the French Political science school with such names as Maurice Duverger, Georges Vedel or François Goguel. They have been more interested in underlining the novelty of the Fifth Republic than the dynamic of transformation that the new Gaullist republic has owed to the prior period.

In this context, few studies had been undertaken by historians. During the period dominated by the Annales School, in the 1950's and the 1960's, French historians had largely abandoned to jurists and to political scientists the field of the Constitutional Studies. The school of "political history" headed by René Rémond at Nanterre and Sciences Po and his followers have devoted most of their works to the study of ideologies (*The Right in France* of René Rémond) or to the study of political parties (Serge Berstein on the Radical Party under the Third Republic). The Constitutional issues have been discussed by political historians only in an indirect way and mainly through the study of political ideas.

Despite of all, it is my conviction that historians can shed an original light on the Constitutional evolution of the French Republics<sup>3</sup>. The period going from the WWI to the birth of the Fifth Republic is full of dramatic changes in the functioning of the institutions, both in the parliamentary sphere and in the governmental organization. Thus, the core of the new political system based on a strengthened Executive power was already set up when the new Constitution of 1958 was discussed and then ratified through a popular referendum. By focusing their attention to institutional practices, historians can shake up the traditional chronology which tends to consider the Constitution of 1958, with its new legal arsenal, as the starting point of the new model of Republic.

To illustrate my methodological approach, I have based this presentation on two examples. One is the Popular Front which won the general election of 1936 and was a Leftist experience characterized both by social reforms and by governmental reforms. The other was the Free French movement headed by general de Gaulle during the WWII. Two reasons can

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<sup>3</sup> Among the studies dedicated to the history of the Parliament, see for instance: Fabienne Bock, *Le parlementarisme de guerre* (Paris, Belin, 2002) and Gisèle Berstein, *Le Sénat sous la IIIe République, 1920-1940* (Paris, CNRS Editions, 2014).

explain my choice. The Popular Front is seldom studied as an example of Constitutional change and I argue nevertheless that it played a decisive role in the overall process of the Constitutional shift which occurred in the period. By contrast, it is not surprising to assert the role displayed by De Gaulle in the transformation of the French republican tradition; but I will show that the origins of the Gaullist experience are more original than it is usually said.

*The Popular Front revisited: a Constitutional experiment?*

The government of the Popular Front led by Léon Blum in 1936-1937 is well remembered for its social reforms, notably with the paid holiday and the reduction in working hours. The public memory of the Popular Front has stayed very vivid up to our time even if it has partially faded away in the last 20 years or so in comparison with the number of ceremonies and publications which characterized the 50<sup>th</sup> anniversary in 1986. In most of the textbooks dedicated to French secondary schools, the Popular Front is still the topic of important chapters. One could say that the Popular Front has almost molded the collective political unconsciousness of the nation by putting forward the capacity of the State to deal with economic and social reforms and in promoting collective progress for the working class.

In other words, the experience of the Popular front is firstly known as an experience of a social and a democratic breakthrough and not as a constitutional momentum. Nevertheless, it is my say here to sustain that the social and political mythology associated with the Front popular had overshadowed the important innovations which occurred in the field of the Constitution and its practice. It is worth noticing that the main actors of the experience, and notably Léon Blum himself, were not willing to acknowledge the part they have played in the shift of the Constitution<sup>4</sup>. Blum's government owed its electoral success to the popular echo of its platform and to the resonance of its watchword captured by the formula "Defense of the Republic". The success of the Socialist Party in association with the Communist Party and the Radical party was thus based on the rejection of the decree-laws, the struggle against fascism (and the Mussolini's regime in Italy had made an extensive use of decree-laws) and the absolute refusal of any sort of authoritarian Republic which could lead to fascism. In this respect, the Popular front was strongly committed to the rejection of any type of revision of

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<sup>4</sup> See : Vincent Le Grand, *Léon Blum (1875-1950) : gouverner la République*, Paris, LGDJ, 2008, 656 p.

the Constitutional Laws of 1875. Blum had played an important role in the rejection of the important debate of the “réforme de l’Etat” which had taken place in the first half of the 1930’s but which was mainly brought by rightist leaders such as André Tardieu.

Most of the historians have followed the declarations of Blum and have given credit to the idea that the Popular Front had displayed a minimal role in the constitutional evolution of the Third Republic. Against this classical assumption, I will argue that the government of the Popular Front was in its own right an experience of constitutional transformation. I see that in three ways. In sum, we have:

#### 1/ The use of new legal tools by the Government for its decision-making process

Léon Blum had rejected the use of decree-laws because they had been the landmark of the governments of Laval and of Doumergue respectively in 1934 and in 1935. The decree-laws were identified to the ill-fame technique of “pleins pouvoirs” (full powers) that is to say a total abandonment of the Parliament sovereignty at the benefit of the Executive. The decree-laws had also a fascist flavour because Mussolini in Italy had made a wide use of them before switching to a complete dictatorship.

However, willing to cope with the large and growing amount of governmental decisions that characterized both the social area and the economic sphere of the time, Léon Blum had chosen to resort to another tool which was the “loi-cadre” of “frame-law”. The “loi-cadre” had a twofold advantage from a republican point of view. On one hand, the “loi-cadre” was respectful of the Parliament. A “loi-cadre” which often implied a social or economic reform was voted by the chambers and this vote gave legitimacy to the reforms undertaken by the government. On the other side, because the text of the frame-law was very short and reduced to few clauses, the actual content of the reform was shaped by governmental decrees after the vote by the assemblies and not through the actual content of the law. The consequence of this practice of “frame-laws” was that if the rhetorical and ritual homage was still made in favour of the republican principle of the Sovereignty of the Parliament, the actual capacity of legislation was transferred from the chambers to the Executive.

#### 2/ The transformation of the machinery of the Government

The use of “frame-laws” despite its republican legitimacy had an important impact on the Constitutional practice. It gave much more work to the governmental team which comprised ministers and high civil servants. The Government had to transform itself in a “factory” or in a “workshop” of direct legislation making. That’s the reason why Léon Blum gave a special attention to the reorganization of the government’s machinery. In 1936, he was already an expert of governmental technicalities having published in 1917-1918 his famous *Letters on Governmental Reform*. The reform consisted in a new repartition of ministries along a vertical and hierarchical line in order to give a new type of authority to the President of the Council. The reform also entailed the development of the Cabinet office which had just been created one year before and was located at the Hôtel Matignon.

By this reform and despite its short life, the government of the Popular Front had strengthened the Executive branch more than any government had done before. The ideas supporting the governmental reform were very different than the series of traditional republican ideals of the 19<sup>th</sup> century. Instead of having a collegial executive, Léon Blum sought to promote what he called a “monarch” at the head of the government. Instead of having an Executive deliberately restricted to a strict scope of few people, Léon Blum wanted to surround the President of the Council with a brain trust and with different committees based on technical expertise.

### 3/ A new management in the Parliament

In order to succeed in his enterprise, Léon Blum had to gain the support of a political majority in the Chamber (for the Senate, it was much more complicated and almost an hopeless task). In this regard, Blum proved himself very innovative. In his inaugural speech in June 1936, as a Premier, he contended that the majority had already been made by the general election and by the choice of the electors. The political majority existed independently from the discussions and before any form of bargaining process made by the parliamentary groups. This statement supposes two things. Firstly, it relied on the new discipline gained by the deputies of the three parties which framed the coalition (Socialists, Radicals and Communists). Secondly, it implied that the Chamber should not follow the political tradition by launching a lengthy debate on the existence and on the boundaries of the majority.

This third change represented also a spectacular questioning of the republican principles and of the parliamentary tradition. It entailed that the Chamber could not shape the political majority according to the evolution of the ongoing debates. It meant that the individual member of the Popular Front coalition, as a parliamentarian, should abandon his traditional liberties of discussing the governmental proposals and rejecting certain proposals. It was a renunciation of the sacrosanct liberty of vote inside the Chambers. In other words, it was a blow against the habitus of vote according to individual consciousness.

To conclude this first part devoted to the Popular Front as a constitutional experience. It's true to say that the Popular Front didn't last for enough time to have a direct and immediate impact on the functioning of government. But it represented a crucial turning point for the Left. It showed that the Left could sustain a shift towards an idea of a stronger Executive and could be ready to lower the standards of the Parliamentary legislative process. It is not surprising that one of the successors of Léon Blum, Daladier, a man of the left by its origins, was seen as a "dictator" between 1938 and 1940 because he took advantage of a stronger Cabinet office and made an extensive use of decrees (especially through "frame-laws or through decree-laws and full powers).

### *The Free French Experience revisited as a Constitutional process*

In comparison with Léon Blum and with the Popular Front, it will not come as a surprise to place De Gaulle and the "France libre" on the side of a more powerful Executive and a more authoritarian style of governing.

De Gaulle embodied the idea of a new Republic based on a strong executive and on a relegation of parliamentary politics. After the war he had been the president and the main speaker of a party, the Rassemblement du Peuple Français (RPF), that constantly criticized the Parliamentary regime of the Fourth Republic. De Gaulle became the first President of the Fifth Republic in 1958 and the first to be elected by direct universal suffrage in 1965. He is the "founding father" of the new presidential Republic.

Much have been said by jurists and political scientists on the foundation of the new Republic at the end of the 1950's but few things had been said about the "constitutional" aspect of the France libre. The story of the France libre has given birth to a large number of

memoirs, souvenirs and narrations which focused mainly on the personal and epic dimension of the Free French. In the same way that a social mythology has overshadowed the constitutional side of the Popular Front, a military and political mythology of the Resistance has blurred the constitutional implications of the France libre. And this underestimation has been made both by the contemporaries and by the historians.

This period of 1940 to 1946 is a decisive one, notably because De Gaulle had not made his mind about the type of Constitution that would have his preference. His apprenticeship of Constitutional Law had started during the war through the role played by René Cassin but took place mainly after the war in the spring and summer of 1945. That is the reason why the period of France libre is so interesting. It's not an implementation of pre-made conceptions of government and that is much more a direct application of what De Gaulle had experienced before the war in terms of institutional organization and notably in terms of military organization.

In London, in 1940, the situation of De Gaulle was very weak in one way because he was very isolated. But it was also a great opportunity to shape a new type of governing process according to personal ideas. De Gaulle had the possibility to build a new organization from a tabula rasa. The weight of the administrative traditions with their routine do not count that much due to the necessity of a complete reconstruction of the "State". For instance, the authority of De Gaulle was more easily imposed on the other members of the provisional government because De Gaulle had started the France libre alone, being the only member and the only chief of the so-called government of the France libre (it changed rapidly with the creation of the Conseil de l'Empire, then with the CFLN in Algiers but the path of a very hierarchical frame of decisions had already been chosen).

It is not surprising to notice that De Gaulle had revived the Cabinet office (the *Secrétariat général du gouvernement*) but had also considerably expanded its scope as well as its role. The SGG was now able, first in Alger then in Paris, to organize the whole task of the government in such a manner that the head of the Government that is to say De Gaulle himself could be the real master of the decision making. Notes and reports had to be sent by each minister to the President beforehand and above all before the meeting of the council of government.

But the main achievement of De Gaulle between 1940 and 1946 was probably that he had reunified under the same person the civilian power of the chief of government and the military power of a supreme commander of the war. From the beginning, De Gaulle was at the same time a political leader and a military chief. Even the episode of 1943 when De Gaulle was opposed by General Giraud did not question his new type of authority. De Gaulle was neither a generalissimo on the old-fashioned type nor was he a dictator on the Franco mode. He was a modern figure of a President able to handle the conduct of the war both on a political ground and a military basis. On the opposite, Giraud was a very old-fashioned General. He was notoriously a conservative in politics and in this regard he was very representative of the majority of French high officers of his generation. Giraud was above all a conservative in his vision of civil-military relations. He loathed politics and politicians and he didn't want to have a type of responsibility which would entail civilian and political commitments or civil-military overlapping. He wanted to be a generalissimo, the chief of the new Army which was to be reunified in North Africa in 1943. At the beginning, under the pressure of the US government, De Gaulle had to concede to Giraud the function of head of the Army. But De Gaulle retained all the political side of the military hierarchy. It is through his political tools that he succeeded in marginalizing Giraud before he could reunify the two powers in his hands that is to say the power of the political head of the government and the military power of a commander in chief.

To conclude on De Gaulle and the *France Libre*, I would say that a large number of the practices which eventually found their accomplishment under the Fifth Republic had already been experienced between 1940 and 1946. The main innovation was the reunification of the political and the military commandment which was a complete U turn in comparison with the former Republican tradition. Under the Third Republic by fear of "cesarism" and of bonapartism, the head of the State or the Head of the Government could not have a military authority. There was a separation of powers in the sense of the separation between civilian and military powers. And this situation of a "disarmed" President of the Republic was the main explanation for the weaknesses of the Presidency up to De Gaulle. Symmetrically, the military nature of the Presidential power of the new President under De Gaulle (whether De Gaulle president of the provisional Government in 1944-1945 or De Gaulle president of the Fifth Republic) played a crucial role in the transformation of the Executive

*General conclusion*

I have tried in this presentation to highlight four main points:

1/ that the changes in the French constitutionalism started long before 1958

2/ that it is more relevant to pay attention to the evolution of practices in the governmental system than to propose an exegesis of the written Constitution

3/ the Left had played a crucial role in the strengthening of the Executive by accepting new legal tools and by transforming its decision making. In this sense, the Left can be seen as the prominent responsible for the decline of the Parliamentary Republic

4/ De Gaulle played also a role in the transformation of the Republic but it did so during the experience of the France libre that is to say before the period of the Fifth Republic. His main achievement was the reunification of the Military Supreme commandment and the concept and the practice of a new Presidential Power.