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Constitutional Law

France

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General Introduction

1. This Part provides a vignette of French constitutional history as well as some significant features of the current regime, including information on the State and its territory, as well as up-to-date data on population and demographics.

§ 1. An outline of French Constitutional History

2. In order to understand the present, one must be aware of past events. Each political regime stems from a reaction to previous regimes. The current French constitutional and political regime is no exception as it is made up of a complex sum of reactions—positive and negative—to a long line of constitutional experiments. In that respect, it is generally agreed that the landmark starting point is the Revolution of 1789. Although there was an organized polity under the old regime (Ancien Régime), with a kind of customary constitution as embedded in the fundamental laws of the Kingdom, there was no constitution in the modern sense—that is understood as a set of rules and principles regulating the relationships between government and those being governed. The Revolution of 1789 represents this significant break from previous political tenets. While representing a significant trauma in the French society at the time, it really marked a fresh start towards the institutional and constitutional principles as we know them today, which include the separation of powers, the principle of a bill of rights, the primacy of the constitution, the principle of sovereignty and the right of suffrage.

3. Legal historians and constitutionalists have various views on how to divide up the different stages of French constitutional history. This is so because France has experimented with an unusually high number of constitutional texts, especially in the first century after the revolutionary period.¹ The aftermath of the revolutionary period marked the start of a search for a consensual and efficient regime which could not be found until a number of constitutional issues had been agreed upon. These issues revolved mainly around the right of suffrage, the form—monarchical, imperial or republican—of the political regime, and the relationships between the Executive and the Legislative. It is generally agreed that French constitutional history can be divided into four main identifiable periods: the first period (1789-1875) deals with the aftermath of the Revolution period with a succession of constitutional attempts aimed at establishing a definitive regime; the second period concerns the rather long period of the Third Republic (1875-1940) which saw the installation of the parliamentary regime, albeit with many defects including that of governmental instability; the third period represents, by contrast, the short period of the Fourth Republic (1946-1958) with a mitigated attempt to rationalize the rules of the parliamentary regime, while the fourth

¹ There is no agreement as to how many constitutions France has actually experienced so far. Fourteen constitutions seems to be the number with three constitutions under the revolutionary period, three under the Consulate and the Empire, two charters and the so-called Hundred Days Constitution of 1815, plus the Constitutions of 1848, 1852, 1875, and, eventually, the Constitutions of 1946 and 1958. However, this number comprises a couple of constitutions which were never applied (Constitution of 1793) or for only a very short period of time (Constitution of 1815). Besides, it does not take into account the periods without any constitutional text in force such as the revolutionary government of 1793-1794, the provisional governments of 1848 and 1870, and, despite having been annulled in law, the Vichy regime of 1940.
period deals with the second longest-running political regime in France, namely the Fifth Republic from 1958.²

I. From constitutional revolutions to the emergence of the parliamentary regime (1789-1875)

4. 1789 opens the way to a revolutionary period which saw the most significant transformations in the political and institutional order of France. Overall, the century following the 1789 Revolution is marked by three traits: (i) the acceptance or rejection by the successive political regimes of the principles posed in 1789; (ii) the fact that the English and American systems of government were a constant source of inspiration for the drafters of the various constitutional texts; and (iii) the numerous attempts to restore the monarchy which postponed the installation of the republican regime until the last quarter of the nineteenth century.

5. The break with the absolute monarchy is complete with the coup d’état of the third state on 17 June 1789. The National Constituent Assembly convened on the occasion issued two foundational acts, namely the 1789 Declaration and the Constitution of 3 September 1791. The 1789 Declaration is inspired by the ideas of the Enlightenment and English and American experiences of bills of rights. As such, it encapsulates the ideas of liberalism and individualism of the so-called bourgeoisie éclairée. It is universal in character in that it proclaims the existence of natural and fundamental rights applicable to all men and citizens at all time and in the whole society. Today, the 1789 Declaration, as an integral part of the Preamble to the Constitution, is positive law and, as such, is used as a norm of reference in the judicial review of constitutionality of laws. The Constitution of 3 September 1791 was inspired by the US Constitution of 1787 and consecrated a presidential regime with a strict separation of powers and the principle of national sovereignty. It endowed the King, in charge of the Executive, with a suspensive legislative veto that could last up to six years.

6. A new period of turmoil ensued following the abolition of the monarchy on 20 September 1792 and the death sentence of Louis XVIth on 21 January 1793. Two other constitutions followed suit in this period. The Constitution of 24 June 1793 (Year I of the First Republic), although never applied, contained interesting features such as the principle of popular sovereignty and the introduction, for the first time in French constitutional history, of direct universal suffrage. The revolutionary government and the Terror episode under the dictatorship of Robespierre were the immediate unfortunate events after the establishment of the First Republic. The Constitution of 22 August 1795 (Year III of the First Republic) was drafted by the survivors of the Terror and, as such, was strongly marked by a fear of the return to a dictatorial regime, hence its emphasis on an absolute separation of powers. It also introduced the notion of bicameralism. However, unable to collaborate, the institutions were consistently fighting each other. This regime ended with the coup d’état of Napoléon Bonaparte on 9 November 1799 (18 Brumaire of Year VIII).

7. The period between 1799 and 1848 is characterized by a dictatorship of the Executive, with two distinct periods: the first one (1799-1814) with the Consulate and the First Empire under the reign of Napoléon Bonaparte, and the second one (1814-1848) with the return of the monarchy to power. The Constitution of 13 December 1799 (22 Frimaire Year VIII) is tailor-made to the needs of

² See, for example, Pierre Bodineau and Michel Verpeaux, Histoire constitutionnelle de la France (Que Sais-Je ? PUF 2000) 5-7, on the artificial character of these divisions.
Napoléon Bonaparte who established the Consulate based on the dictatorship of the Executive. It was characterized by the prominent role of the First Consul and the neutralization of the legislative power which was deprived of the power of legislative initiative. Progressively, the Consulate evolved towards a fully-fledged authoritarian regime with the establishment of the Consulate for life (Constitution of 2 August 1802) and of the First Empire (Constitution of 18 May 1804). Overall, the Napoleonic regime featured the traits of a dictatorship, internally, with increased powers of the police and suppression of a number of freedoms, as well as externally, with conquest wars. The military defeat of Napoléon at Waterloo in 1815 definitely swept away the regime, despite his efforts to root and legitimize it (i.e., the interlude of the so-called Hundred Days or Cent jours with the additional law to the constitutions of the Empire of 22 April 1815). Despite this swift turn around, the Consulate and the First Empire left a significant legacy to subsequent regimes in terms of institutional and legal instruments, many of which are still in existence today (e.g., the Council of State, the Civil Code).

8. The return to the monarchy in 1814 was possible due to the support of a number of European allies, namely in Austria, England, Prussia, and Russia. The Restauration started off when Louis XVIIIth (grandson of Louis XVth, House of Bourbon) granted a constitutional Charter to his people (Charter of 4 June 1814). The 1814 Charter maintained a number of principles from the Revolution, as regards the protection of individual freedoms in particular, and also laid down the foundations of the parliamentary regime. The King, who had been in exile in Great-Britain, took inspiration from the English system with, for instance, the establishment of a bicameral Parliament (House of Peers and House of deputys) and an embryo of parliamentary control with the introduction, for the first time, of the right of dissolution. However, the major defect of the 1814 Charter was the lack of government political accountability to the Houses of Parliament. The revolutionary days of 1830 ensued provoked by the much less apt, politically, successor of Louis XVIIIth, namely his brother Charles Xth.

9. The July Monarchy started with the ascent of Louis-Philippe the First (House of Orléans) to power. The Charter of 1830 represented a compromise between the monarch and Parliament which afforded more powers to the latter, notably via the right of legislative initiative. The eighteen years of reign of Louis-Philippe allowed the parliamentary system to take root. However, the increasing intrusion of the monarch in public affairs, especially after 1840, prevented its normal development. In the troubled context of economic and social upheaval throughout Europe at the time, a revolt burst in 1848. After the fall of Louis-Philippe, a temporary government proclaimed the (Second) Republic on 24 February 1848. The government decided to elect, by universal suffrage, a Constituent Assembly which produced, during an insurrectional climate, the Constitution of 4 November 1848. The drafters of the 1848 Constitution took inspiration, among others, from the US Constitution of 1787. It enshrined the principle of direct universal suffrage and a strict separation of powers. However, this last feature was responsible for the downfall of the 1848 Constitution, the public powers being unable to resolve their conflicts in the absence of a right of dissolution of Parliament and government liability before it. In the meantime, the Prince-President Louis-Napoléon Bonaparte (nephew of Napoléon Bonaparte), having failed to revise the ban imposed on the President of the Republic to be re-elected immediately, decided to obtain by force what he could not obtain by constitutional means. His coup d’état of 2 December 1851 allowed him to draft the Constitution of 14 January 1852. Despite its republican character and adherence to the main 1789 principles, the 1852 Constitution re-established the institutions of the Empire.
under the reign of Napoléon III. The regime later evolved towards a more parliamentary one. However, the Second Empire ended with the defeat against Prussia at Sedan on 1-2 September 1870.

II. The Third Republic (1875-1940)

10. The Third Republic was sandwiched between two (defeat) wars. It represents, however, the longest (sixty-five years) regime in French constitutional history despite the significant perils that marked this period, the trauma of the First World War in particular.5 The landmark events marking the start and the end of the Third Republic are the following ones. After the capitulation of Napoléon III on 4 September 1870, a peace treaty (Treaty of Frankfurt) was concluded on 10 May 1871 which ended the Franco-Prussian war. Internally, unrest ensued because of the Paris Commune (Commune de Paris) which was a radical socialist and revolutionary government that ruled Paris during several months in 1871 as a direct result of the decomposition of the Second Empire and the pressing influence of socialist movements at the time. Order was progressively restored and a string of temporary constitutional laws, representing a much needed compromise between the monarchists and the republicans after a period of deep trouble, were adopted. These constitutional laws led to the more definitive set of constitutional laws of 1875 which established the Third Republic.

11. The first temporary constitutional law (Constitution Rivet), adopted on 31 August 1871, and assigned the official title of ‘President of the Republic’ to the head of the Executive. His functions consisted of the right to promulgate laws and ensure their implementation. The President of the Republic had the right to appoint his ministers whose role was to assist him. One particular feature of the constitutional law resided in the political accountability of the President of the Republic and the ministers towards the Assembly of elected representatives of the citizens with the practice of the countersignature (i.e., all acts by the President would be countersigned by the relevant minister since the President was irresponsible politically). The Constitution Rivet was partially amended by a second temporary constitutional law (Constitution de Broglie), adopted on 13 March 1973. It mainly aimed at limiting the intervention of the then President of the Republic (Adolph Tiers) at the Assembly. The third temporary constitutional law called the Loi du Septennat, adopted on 20 November 1873, established a compromise between the two monarchic dynasties, namely the Orléanists and the Legitimists. The compromise consisted of giving to the Count of Chambord, the Legitimistpretender, the throne as the future Henry Vth. As he did not have any descendants, the heir to the throne would have come from the Legitimist dynasty. However, his steady refusal of the tricolour flag, which reflected his desire to re-establish an absolute monarchy, aborted the compromise. Parliament eventually decided to establish a provisional regency of seven years for the sole benefit of Marshal Patrice de MacMahon, Duke of Magenta. MacMahon was conferred the executive power intuitu personae until the coming of a King. Nonetheless, from a personal seven-year term of office, the constitutional law of 25 February 1875 established an impersonal seven-year term. The National Assembly eventually adopted—by a very narrow majority of 353 votes in favour, against 352—the so-called Wallon amendment on 30 January 1875 whereby the

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5 Approximately 6 million dead per day during the four years of war. Proportionally, in terms of soldiers killed in combat, France was the most affected countries with 1.45 million deaths and disappearances, as well as 1.9 million injured soldiers which represented around 30 percent of the active male population at the time.
President of the Republic was to be elected at an absolute majority of the votes cast by both the Senate and the House of Deputies convened in a National Assembly. The significance of the Wallon amendment cannot be underestimated since it changed the nature of the regime and officially (re)established the Republic.¹⁴

12. Following on the preceding laws, another set of constitutional laws was adopted, namely the constitutional laws of 24 February 1875, of 25 February 1875 and of 16 July 1875, which formed the basis of the Third Republic Constitution. As a result of a compromise between the Republicans and the moderate Monarchists, these laws were short, without any mention of fundamental principles, just aimed at laying down the rules organizing the functioning of the public powers.

13. In terms of the end of the Third Republic, the German invasion of 1940 resulted in the resignation of the President of the Council (Paul Reynaud) who was replaced by Marshal Pétain. Pétain signed the armistice on 22 June 1940 and started a regime of collaboration with the occupying forces.⁵ The constitutional law of 10 July 1940 endowed Pétain and his Government, based in the town of Vichy, with the full powers to draft a new constitution which would primarily guarantee the values of ‘work, family and homeland’ (travail, famille, patrie).⁶ The Vichy Government abrogated all preexisting constitutional texts, substituted the French (metropolitan) State to the Republic and negated all protection of individual rights and freedoms. Concomitantly, the Government of Free France (Gouvernement de la France libre) was being installed at the initiative of General De Gaulle who launched his appeal on 18 June 1940 to continue the fight against the occupier and invite any resistant to join the Free French Forces (Forces françaises libres). During the victorious Campaign of France (1944-1945), the provisional Government of the French Republic reinstated, by the Ordinance of 9 August 1944, the republican legality and declared null and void all acts taken under the Vichy Government.

A. The Institutions of the Third Republic

14. Under the Third Republic, the public powers were organized in a parliamentary regime. A two-headed Executive, a bicameral Parliament and classical mechanisms of this type of regime were thus put in place. The Executive consisted of the President of the Republic and the ministers. The former was granted important powers (i.e., appointment of the ministers, right of legislative initiative and right of dissolution of the House of Deputies with the approbation of the Senate), although these were only formal due to the two basic principles of the parliamentary regime, namely the ministerial countersignature and the political irresponsibility of the President of the Republic. The Cabinet government was a collegial body whose members were solidarily responsible before the Houses of Parliament of the decisions taken by the government. The customary institution of the President of the Council (of ministers) had (yet) no textual basis at the time, although the practice increasingly gave prominence to the role. The Legislative consisted of the two Houses of Parliament with equal powers (bicaméralisme parfait). The perfect bicameralism meant that both Houses were granted a fully-fledged legislative power which

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¹⁴ Symbolically, that was one of the first constitutional provisions to be abrogated by the Vichy laws in July 1940.
⁵ By 1942, the totality of the French territory was occupied by the Germans.
⁶ Constitutionally, the 1940 constitutional law was invalid since it did not respect the normal procedure for constitutional amendments; the government, instead of the National Assembly, proceeded to amend the constitutional texts, including infringing one of the fundamental tenets of the French regime, namely its republican nature.
comprised the right of legislative initiative and the fact that laws had to be voted in identical terms by both Houses. Both Houses had also the power, under different conditions, to commit the responsibility of the government—save for finance and budgetary bills which had to be tabled and voted upon by the House of Deputies in the first place. The House of Deputies comprised 500 to 600 members elected for a four-year term by universal direct suffrage in a two-round first-past-the-post system. The three-hundred members of the Senate were elected by indirect universal suffrage for a nine-year renewable term (with seventy-five of them, irremovable, elected by the National Assembly). The Upper House of Parliament represented a rather conservative assembly from the countryside and small towns, although still defending the republican values of the regime. The relationships between the Executive and the Legislative were supposed to be balanced based on the two reciprocal means of pressure of the parliamentary regime, namely the principle of political responsibility of the government before both Houses of Parliament, on the one hand, and the right of dissolution of the House of Deputies, after consultation of the Senate, in the hands of the President of the Republic, on the other hand.

B. The Practice of the Regime

15. The regime of the Third Republic, although long in duration, was unsuccessful in many respects. A political crisis in 1877 discredited the right of dissolution for a long time. Generally, the dysfunctional parliamentary mechanism resulted in a chronic governmental instability which precipitated its downfall.

16. On 16 May 1877, the then President of the Republic (Marshal Patrice de MacMahon) accused his President of the Council (Jules Simon) of undue concessions in favour of the Republicans. After the legislative election of 1876, Simon enjoyed a strong support of the House of Deputies, composed in majority of Republicans. Refusing to appoint a President of the Council from the ranks of the Republicans, MacMahon appointed Albert de Broglie, a monarchist, to take up the position of President of the Council. Facing a strong opposition from the deputies, MacMahon then dissolved the Lower House on 25 June 1876, with the approbation of the Senate. However, the Republicans prevailed again during the following legislative election of 1877, as well as during the senatorial election of December 1877. As a consequence, MacMahon resigned on 30 January 1879 and was replaced by Jules Grévy. The 1877 crisis revealed the confrontation of two conceptions of the parliamentary regime: on the one hand, a dualist conception whereby the government is responsible before both the House of Deputies and the President of the Republic, as advocated by MacMahon; on the other hand, a monist conception whereby the government is responsible only before the House of Deputies, as advocated by the Republicans. The consequences of the 1877 crisis contributed to clarify a number of ambiguities on the nature of the regime: first, a definitive installation of a monist type of parliamentary regime as well as of the republican form of government; secondly, a disregard of the right of dissolution which was from then on perceived as dangerous for the Legislative. The unfortunate perverse effect was a progressive submission of the Executive to Parliament in a so-called régime d’assemblée.

7 There were very few constitutional amendments during the Third Republic; one of them was introduced with the Law of 14 August 1884 according to which, among other changes on the secularisation of the institutions, the republican form of government could not be subject of an amendment.
The Third Republic experienced one hundred and seven governments between 1875 and 1940, of which eight were dissolved by the Senate. The chronic governmental instability was due to the combination of several factors: (i) The fact that the procedure to engage the responsibility of the government before Parliament was not regulated; (ii) The fact that the government could be held responsible before both Houses of Parliament therefore increasing the chances of such an occurrence (also, the absence of incompatibility between ministerial and parliamentary mandates played a role in the instability, parliamentarians trying to dissolve the government to become minister); (iii) The non-use, since the 1877 crisis, of the right of dissolution hereby depriving the government of a key means of pressure leading de facto to the dependence of the Executive vis-à-vis the Legislative; (iv) The existence of multipartism which caused difficulty in terms of forming strong majorities since successive governments were in fact based on fragile alliances and coalitions between political parties. Despite the adoption of a number of measures in order to mitigate such defects (e.g., the adoption of decree-laws which allowed the government to intervene in the legislative area), the regime of the Third Republic could not be cured and ended in a context of growing anti-parliamentarism and rise of the extremist political parties, the far-right in particular.

III. The Fourth Republic (1946-1958)

The Fourth Republic was established after the Second World War. Despite a few attempts towards its rationalization, the regime failed to function properly and efficiently. In many respects, it appeared to mark a return to the regime of the previous Republic. The landmark events marking the start and the end of the Fourth Republic are the following ones. On 3 June 1944, the French Comity for the National Liberation became the first temporary government of the French Republic. As an extension of the Government of Algiers, it was neither in conformity with the legality of the Third Republic, nor that of Vichy, but derived its legitimacy from the Resistance movement. The temporary government gave the French people the following alternative: either to reestablish the regime of the Third Republic, or to vote for a national constituent assembly that would be granted the—limited or unlimited—power to draft a new constitution. The French people favoured the latter in the referendum of 21 October 1945.8 A second temporary government was established in accordance with the constitutional law of 2 November 1945. Also adopted by referendum, it granted limited powers to the national constituent assembly (i.e., the imperative to draft a project of constitution within seven months and to submit it to a referendum) and provided for the interim organization of public authorities.

A first constitutional draft was rejected on 5 May 1946 for political (i.e., fear of a constitution inspired by communist ideas) and institutional (i.e., distrust of the planned assembly regime based on a single legislative assembly) reasons. In the end, the divergences between De Gaulle, who advocated a strong executive power,9 and the Socialists and Communists in government proved irreconcilable which steered De Gaulle to resign. After the election of a new constituent assembly, the French people approved—albeit with almost a third of abstention—a toned-down constitution which came into force on 27 October 1946.

8 The referendum allowed French women to exercise their right to vote for the first time in history, right which had been granted by the Ordinance of 21 April 1944.
9 See below the Bayeux Speech of 16 June 1946.
20. In terms of the end of the Fourth Republic, the degradation of the regime was due to two factors: government instability and the recourse, despite its prohibition under the 1946 Constitution, to delegated legislation. Government instability had itself various causes, including the difficulty to obtain a solid majority in Parliament due to the disintegration, a few years after the war, of the three-party system, the tendency to partisanship instead of efficient solidarity within government, as well as the mode of suffrage which included some proportional representation. Also, delegated legislation proved problematic because of its large use, first, by means of framework laws when Parliament determines the limits of the action of government, and secondly, by recourse to decree-laws in case the government would overstep the legislative framework.

A. The Institutions of the Fourth Republic

21. The Fourth Republic revolved around the legislative assembly, where the position of President of the Republic was not predominant. The Executive was composed of the President of the Republic and the President of the Council of Ministers. The President of the Republic was, like under the Third Republic, elected for seven years (re-eligible only once) by indirect universal suffrage by Parliament. Endowed with only formal powers, he no longer had the power of legislative initiative nor the right of dissolution of Parliament. As being politically irresponsible, his acts were all countersigned by the President of the Council or by the ministers. However, the power to appoint the President of the Council allowed him to enjoy a certain amount of strategic power. The President of the Council, whose appointment by the President of the Republic had to be approved by the National Assembly, was the real holder of the executive power. As the head of government, he had the power to appoint (and dismiss) his ministers, under the procedure of the so-called double investiture whereby the President of the Council was approved by the National Assembly, in the first place, and together with his whole government, in the second place. The Legislative consisted of the National Assembly, which succeeded the House of Deputies, and the Council of the Republic, which succeeded the Senate, with unequal powers (bicaméralisme imparfait). Members of the National Assembly were elected by direct universal suffrage for a period of seven years, although the choice of the electoral mode (i.e., proportional representation within the department) prevented the establishment of stable majorities, especially from the mid-1950s when the Communist Party turned against the regime. The National Assembly was endowed with full legislative powers (i.e., right of legislative initiative and unlimited area of the law) and the mission to control the action of the government. The Council of the Republic, like the Senate before, represented conservative trends of the countryside and small towns. Its political powers were greatly diminished since the last word belongs to the National Assembly in terms of law-making; also, the government was no longer responsible before the Senate. The Senate was no longer able to control the action of the Executive.

B. The Practice of the Regime

22. The Fourth Republic had attempted to rationalize the parliamentary regime inherited from the previous Republic. Despite this, its practice was not that satisfactory with a persistence of governmental instability (i.e., twenty-four different governments over its short twelve years of existence). The parliamentary mechanisms concerned by the rationalization provided for in the 1946 Constitution were the motion of censure, the vote of confidence and the right of dissolution.
New conditions were put in place in order to make it more difficult to engage the responsibility of the government. The motion of censure had to be voted upon one day after it was tabled (to allow the government to gather support and to allow deputies to think their decision through), at an absolute majority of the votes cast. No motion of censure was ever adopted under these conditions. The vote of confidence, aimed at obtaining the support or confidence of the National Assembly regarding the general policy or a specific text, was submitted to the same strict conditions as the motion of censure. As far as the dissolution was concerned, the objective was to make it more difficult to resort to it; it was decided by the President of the Republic at the request of the President of the Council who could not resort to it within eighteen months of a general election. The only constitutional amendment of the 1946 Constitution was made by Law of 7 December 1954 in order to rationalize the *double investiture* procedure, with two changes. First, the approval of the appointment of the President of the Council and his government were made in one go before the National Assembly hereby making the installation of the government quicker. Secondly, the approval by the Assembly had to be voted by a relative majority of the votes cast, meaning that abstention would play in favour of the government.

23. Overall, the regime was characterized by a banalization of the political responsibility of the government and a right of dissolution of the National Assembly which was made difficult to use. Indeed, the rules regulating the political responsibility of the government were diverted by the members of the National Assembly who deliberately chose to express their distrust of governments by voting at an absolute majority of the votes cast, or by a simple majority vote—the so-called practice of ‘calibrated vote’ (*vote calibré*). According to this practice, the deputies would agree, after consultation of the political groups, to vote the just amount of votes to put the government in minority. Without a strong majority to implement its programme, while at the same time being unable to dissolve the Assembly, the government was forced to resign. On the twenty-four governments of the Fourth Republic, only five were dismissed by constitutional rules, the others were dismissed by the practice of ‘calibrated vote’.

**IV. The Fifth Republic (1958 to present)**

24. The Fifth Republic is the political system currently in force in France. It is based on the Constitution adopted on 4 October 1958 (hereafter the Constitution). The Constitution established a parliamentary regime, despite a quick shift towards a form of presidential regime which has rendered it ‘hybrid’ or ‘mixed’ over the course of its sixty years of existence.

A. Adoption of the Constitution

25. The Constitution was born out of a specific historical context linked to the instability of the previous Republics and the immediate events of the Algerian War. The collapse of the Fourth Republic and, concomitantly, the return of De Gaulle to power led to the adoption a new constitutional text. The Algerian troubles degenerated with the crisis of 13 May 1958 when a number of civilians and military, in favour of maintaining Algerian in the French Republic, triggered an uprising. The confused situation overseas and the absence of reaction from the central

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10 The right of dissolution was used again in 1955 only—with a gap of nearly a century since 1877—by René Coty, at the request of Edgar Faure, for tactical reasons.
power led the then President of the Republic (René Coty) to call De Gaulle to solve the crisis. Entrusted with full powers under the constitutional law of 3 June 1958, De Gaulle was given the mission to draft a new text—by total derogation to the normal amendment procedure under the 1946 Constitution. To this end, he accepted the conditions posed by the MPs, namely to respect a number of formal commitments (i.e., to submit the revised constitutional text to a consultative committee composed of two-thirds of MPs, to consult the Council of State, and to submit the approved text to referendum) and substantial commitments (i.e., to guarantee the right of universal suffrage, source of sovereignty; to respect the separation between the executive and legislative powers; to respect the principle of responsibility of the government before Parliament; to guarantee the independence of the judiciary; and to provide for the organization of new relationships with the overseas associated peoples).

26. The sources of inspiration of the Constitution are diverse stemming not only from its main instigator, De Gaulle, but also from other key figures. In his Bayeux Speech of 16 June 1946, De Gaulle had given the outline of what he regarded as the constitution that was needed for France at the time. In reaction to the absolutism of Parliament and the general weaknesses of the previous regimes, the necessity was to strengthen the role of the executive power around a President of the Republic who would act as the ‘arbiter’ between public powers, as a kind of outsider able to represent the continuity of the regime detached from political maneuvering. Other contributions were of a more technical nature such as the one by Michel Debré, a close ally of De Gaulle, in terms of refining the organization of parliamentary work under the direction of the government and the delimitation of the areas of the legislative power and that of the regulatory power; former Presidents of the Council (notably, Guy Mollet and Pierre Pfimlin), who later became ministers under De Gaulle’s presidency, contributed, among other areas, to the reform of the mechanism of government responsibility and the delegated legislation.

27. The Constitution was approved by referendum on 28 September 1958 at a vast majority (79.25 percent) with a low abstention (only 15.6 percent), a few notable dissenting voices (among them, Pierre Mendès France and François Mitterrand), and a rejection by the people of Guinea who then obtained their independence. It came into force on 4 October, and De Gaulle became the first elected President of the Fifth Republic.

B. Evolution of the Constitution

28. The Constitution is composed of provisions organizing the institutions, describing their missions, attributions and their relations with one another. Its preamble refers to two fundamental texts, namely the 1789 Declaration and the Preamble to the 1946 Constitution. The 2004 Charter for the Environment was subsequently added to this ensemble by a 2005 constitutional amendment. These three texts are a good representation of the recognition of the different phases in right protection, from the traditional civil and political rights, to post-war social rights and, more recently, collective environmental rights. The Constitution and its preamble form a so-called ‘block of constitutionality’ (bloc de constitutionnalité) which is the basis for judicial constitutional review exercised by the Constitutional Council.

The main contribution of the Constitution lies in the rationalization of the parliamentary regime, meaning the organization of balanced relationships between the public powers. The Constitution established a regime which is parliamentary in essence, despite a quick shift towards a form of presidential regime as resulting from the election of the President of the Republic by universal direct suffrage from 1962, the use of the referendum by the President and, more generally, the mark left by De Gaulle. The Constitution has had many critics over the years—for example, Francois Mitterrand who was, however, satisfied with the Constitution when he became President. The Constitution has passed the test of time as the institutions have been flexible enough, for example, to allow periods of cohabitation on three occasions (See below). However, given some deeper dysfunctional traits such as, for instance, the unusual prominence given to the Head of State and the articulation of his role with that of the Prime Minister, the question of the adoption of a Sixth Republic arguably remains open.

§ 2. Characteristics of the French State

The Constitution defines, in its First Article, the essential characteristics of the French State: ‘France is an indivisible, secular, democratic and social Republic.’ The particular functioning of the political regime—as, in essence, a parliamentary Republic albeit functioning as a semi-presidential regime—is also an interesting fundamental trait.

I. The Indivisibility of the Republic

By stating that the French Republic is indivisible, the Constitution affirms the unitary character of the State. The 2003 constitutional amendment qualified this unitary form of the State by allowing for the decentralized organization of the Republic.13

A. A Unitary State

The principle of indivisibility of the Republic is of constitutional value. It has a two-fold dimension. First, it is attached to the notion of French people which, accordingly, cannot be subdivided into communities whether locally-based or ethnicity-based; in other words, the French people are ‘a unit incapable of any subdivision by law’.14 Moreover, the principle of indivisibility of the Republic is opposed to the recognition of collective rights to a group defined by a community of origin, culture, language or belief as decided in relation to the European Charter for Regional or Minority Languages.15 Secondly, the indivisibility of the Republic is attached to the territory which, accordingly, cannot be divided. Local authorities cannot be granted normative powers attributed to the legislature by the Constitution, save under the specific limits authorized by decentralization and territorial administration. The unity of the legislative power over the territory of the Republic, and the powers attributed to Parliament and the government, must be preserved.16

13 See below Part III The State and its Subdivisions.
14 CC Decision No 91-290 DC of 9 May 1991, Loi portant statut de la collectivité territoriale de Corse, Rec. 50, pt 11*. The mention of Corsica in the Constitution as is proposed in the constitutional amendment, currently (June 2018) under discussion in Parliament, is likely to be a bone of contention in this regard.
15 CC Decision No 99-412 DC of 15 June 1999, Charte européenne des langues régionales ou minoritaires, Rec. 71*.
16 CC Decision No 91-290 DC of 9 May 1991, Loi portant statut de la collectivité territoriale de Corse, Rec. 50, pt 15*.
Moreover, even if ‘the law can lay down the conditions for the autonomy of the administration of local authorities; it is subject to preserving the prerogatives of the central State.’ The Constitutional Council specified that these prerogatives cannot be restricted or deprived of effect, even temporarily.

B. A Decentralized Organization

33. Indivisibility and decentralization are not incompatible. The French State has had a long tradition of deconcentration and decentralization of its territory. Continuing the process of devolution and empowerment of local authorities initiated in 1982, a major reform occurred with the 2003 constitutional amendment which refers to the decentralized nature of the Republic in the following terms: ‘France is an indivisible, secular, democratic and social Republic. [The Republic] shall ensure equality of all citizens under the law without discrimination based on origin, race or religion. [The Republic] respects all beliefs. Its organization is decentralized (emphasis added).’ However, the constitutionalization of decentralization has not questioned the unity of the Republic. Decentralization cannot cross the frontier which separates it from federalism.

II. Secularism

34. See below Part V. Specific Issues, Chapter 4. The Constitutional Relationship between Church and State.

III. A Democratic and Social Republic

35. Any political regime is built around a number of values and the Fifth Republic is no exception. Its democratic and social character refer to a number of traditional republican values that the Republic took over and which revolve around the social republican order, on the one hand, and the affirmation and protection of fundamental rights, on the other hand.

A. Democracy and the Rule of Law

36. The Fifth Republic is based on the rule of law. This refers to core specific principles of the republican order, namely the recognition of the right to universal suffrage—with the express recognition of political parties and groups which contribute to its expression thereto—the respect for public freedoms and fundamental rights, the principle of national sovereignty and ‘government of the people, by the people, and for the people’ (Article 2 Constitution). The power of the State proceeds from the Nation that is from the body of French citizens. The concepts of both Nation and citizenship are acquis from the 1789 Revolution, irremediably linking citizenship to nationality. A French citizen is entitled to civic rights, the right to vote and stand for election in particular. Nationality may be attributed or obtained in different ways and is regulated by law (i.e., 1993 Code of Nationality, amended a number of times). Nationality law is part of civil law and is

18 Ibid.
All French nationals are regarded as citizens as long as they enjoy their civil and political rights (with the particular situations concerning citizens of the EU and those of New Caledonia). A contrario, all those people who do not possess French nationality are regarded as foreigners, who are, as a matter of principle, not entitled to vote in domestic elections (except for EU citizens residing on the French territory who are entitled to vote in EU elections and local domestic elections).

37. Also, other characteristics are worth noting as follow: the language of the Republic is French; its emblem is the tricolor flag ‘blue, white and red’; its national anthem ‘La Marseillaise’; and its motto ‘Liberté, Égalité, Fraternité’. Concerning the language, French is the official language that must be used in all oral and written communication by and with the public administration. The use of a regional or local language is for private or cultural purposes only. While the use of such a language ought to be supported and even encouraged, the principles of indivisibility of the Republic and of unity of the French people bar any recognition of a special status of linguistic minorities. The constitutional status of regional languages is that they simply form part of French heritage (Article 75-1 Constitution).

38. Respect for the rule of law also refers to the fundamental principle of the separation of powers which has structured the French constitutional legal order since the 1789 Declaration. Under its Article 16, ‘any society in which the guarantee of rights is not guaranteed, nor the separation of powers determined, has no Constitution.’ Separation of powers appears as the necessary corollary of the limitation of power and hence the protection of human rights: the mutual control exercised by the three powers towards one another preserves the individual from the threats on his fundamental rights. However, this theory has not always been strictly implemented under the successive regimes. A too strict separation led to the paralysis of the institutions during, for example, the Directoire period (1795-1799), or under the Second Republic (1848-1851), where the conflict between the Executive and the Legislature had each time ended in a coup d’état. What has been primarily favoured in that regard is a system of collaboration of the different (separated) powers, instead of their strict separation. A flexible separation of powers refers to the organization of the State where the different powers—legislative, executive and judicial—are distinct but have the opportunity to collaborate and dialogue in order to guarantee the regular functioning of public authorities. As a consequence, the executive power can intervene in the drafting of laws and the legislative power can intervene in regulatory functions. The power of the President of the Republic to dissolve the National Assembly, the possibility for the legislative power to overthrow the government, the submission of public prosecutors to the hierarchical authority of the government are all manifestations of a flexible approach to the separation of powers.

39. In addition, the separation of powers had specific consequences in the French legal system. Indeed, historically, ordinary judges could not interfere with government affairs. Courts were deprived of the jurisdiction to deal with disputes concerning the administration under the Laws of 16 and 24 of August 1790 and the Decree of 16 Fructidor Year III (2 September 1795). Based on a distrust of judges as well as due respect for the separation of powers, it meant that the acts of the legislative power and the executive power were not susceptible to judicial review on the ground

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19 See below Part IV. Citizenship and the Administration of Justice, Chapter 1. French Citizenship.
that ordinary courts did not have sufficient legitimacy to judge acts emanating from authorities proceeding from universal suffrage and acting in the name of the general interest. An aggrieved individual had to sue the administration before the administration itself, up to ministerial level (the so-called ‘minister-judge’ system where the administration is judge and party at the same time). The establishment of administrative courts, namely the Council of State by the Constitution of Year VIII (1799), and the departmental prefectural councils by the Law of 28 Pluviôse Year VIII (17 February 1800), and the subsequent development of administrative law, modified this situation by allowing acts of the administration to be challenged before a separate set of courts, namely the administrative courts. In that sense, the ‘French conception of the separation of powers’ is today associated with a dual judicial order, namely the ordinary judicial order (ordre judiciaire) with the Court of Cassation (Cour de cassation) at its top, and the administrative judicial order (ordre administratif) with the Council of State (Conseil d’État) at its top.

40. The development of a constitutional court came about more recently with the establishment of the Constitutional Council (Conseil constitutionnel) under the Constitution. Originally, a body with limited power of review, it has developed into a constitutional court akin to that of other European jurisdictions. While the Council of State is empowered to judicially review the conformity of regulatory acts adopted by the government to the Constitution, the Constitutional Council has the power to review the conformity of laws with the Constitution, whether before they are promulgated (a priori review), or after their promulgation (a posteriori review).

B. A Social Republic

41. The meaning of the social character of the Republic is somewhat elusive. In essence, it means that the French democratic regime is associated with a specific project of society which ensures the collective cohesion of all individuals and groups of individuals. In other words, the Republic is not fully achieved unless it adds to its democratic character a minimum of social content. This is an acquis from the 1789 Revolution. The National Constituent Assembly (1789-1791) proclaimed at the time that ‘every man at birth is entitled to protection and help from humanity (sic)’, thereby establishing a close association between the promotion of human rights and the recognition of social rights. This idea was consecrated by subsequent regimes, notably under the legislation of the Third Republic and the recognition of economic and social rights as enshrined in the Preamble to the 1946 Constitution. For some authors, the realization of the social character of the Republic translates into the existence and development of a branch of law dedicated to the protection social rights (droit social), the development of the public service, and the constant promotion of a social policy based on solidarity. Other principles manifest the social character of the Republic such as the fraternity principle based on citizenship, the equality of opportunity provided for by the schools of the Republic, the social interventionism of the State, the pursuit of

21 Notably the Law of 24 May 1872 which allowed the Council of State to become a fully-fledged administrative court deciding without interference from the Executive in a so-called system of ‘delegated justice’ (justice déléguée), and the Cadot Case of 13 December 1889 in which the Council of State abandoned the doctrine of the minister-judge.
22 CC Decision No 86-224 DC of 23 January 1987, Loi transférant à la juridiction judiciaire le contentieux des décisions du Conseil de la concurrence, Rec. 8, pt 15.
24 Michel Borgetto and Robert Lafore, La mise en œuvre de la République sociale : Contribution à l’étude de la question démocratique en France (La Politique éclatée PUF 2000).
the common good, as well as the national solidarity recognized between citizens, on the one hand, and between the different parts of the territory of the Republic, on the other hand.

IV. The Political Regime

42. The regime of the Fifth Republic is atypical in that it is at root parliamentary, albeit functioning with some traits of a presidential regime.

A. A Parliamentary Republic

43. The political regime established in 1958 is parliamentary, based on the principle of the responsibility of government before Parliament, the National Assembly more precisely (Article 50 Constitution). The government has to resign in case of the adoption of a motion of censure by the National Assembly or after a negative vote on its programme or a declaration of general policy. However, in an effort to break from the assembly regime and the governmental instability that characterized the previous regimes, the Constitution aims at strictly regulating the prerogatives of Parliament for the benefit of the government, in order to preserve the latter from increase domination by the former. Another novelty is the delimitation of the area assigned to the legislature which is now limited to those matters enumerated under the Constitution (Article 34 Constitution). The area of competence of the regulatory power held by the government is thus extended to all other matters. Furthermore, the Constitution has established a constitutional review of legislation adopted by the National Assembly to review its conformity with the Constitution (Article 61 Constitution). Finally, the incompatibility between ministerial functions and the parliamentary mandate represents a strict separation between members of government and MPs. The Constitution has also increased the legitimacy of the President of the Republic by changing the regime of his election in comparison to the two previous republics; the Head of State was elected—before it was further changed in 1962—by an electoral college composed of deputies and senators, and extended to representatives of local authorities (i.e., departments and municipalities). It reflected the wish of De Gaulle to avoid the presidential election being monopolized by political parties.

B. A Semi-Presidential Regime

44. The two democratic elections in France allow for the designation of the President of the Republic (presidential election), on the one hand, and for the designation of a parliamentary majority (legislative election) which role is to support the President and his government, on the other hand. From there, the practice of the regime has revealed two different types of situations, primarily caused by the difference in duration between the presidential term of office and the parliamentary mandate. A first situation arises when the President of the Republic is of the same political hue as the majority in Parliament which corresponds to the normal functioning of the regime because there is a perfect alignment between the President, the government and the majority in Parliament (fait majoritaire parfait); the President of the Republic thus benefits fully from the prominence of his role. The second situation comes from the fact that the two types of elections have returned a different majority each, so the alignment is broken; this fait majoritaire imparfait has led to the phenomenon of cohabitation whereby the President of the Republic has to appoint a Prime Minister reflecting the majority in Parliament (but not necessarily the leader of
the victorious political party); this is an abnormal functioning of the regime although it is more in line with the parliamentary nature of the regime.

1. The Preeminence of the President of the Republic

45. Originally conceived as a parliamentary regime, the Fifth Republic has become a semi-presidential type of regime since the referendum of 28 October 1962 which established the election of the President of the Republic by direct universal suffrage. The modification of the mode of election of the President of the Republic has had a profound impact on the institutional balance. Indeed, because of a newly acquired democratic legitimacy, the Head of the State found himself at the centre of the institutional system. The President of the Republic would, from then on, really stand as the actual keystone of the political and institutional system, while the right of dissolution that he is entrusted with has had the effect of limiting the possibility for the National Assembly to question the accountability of the government. The legitimacy of the President of the Republic has, to that extent, become superior to the one of the deputies as deputies are elected within limited constituencies and are divided into different political groups. The President of the Republic, meanwhile, is elected by all citizens and, as such, represents all French people regardless of their political tendencies.

46. The reinforcement of the legitimacy of the President of the Republic has also had an effect on the relationship of his government with Parliament, especially as regards the vote of confidence on the programme of the government by the National Assembly (Article 49 Constitution). Because the Prime Minister derives his authority from the President of the Republic who appoints him—except for periods of cohabitation (See below)—the practice has been that a number of governments have come into office without seeking the confidence of the National Assembly while others have made a declaration of general policy, without it being necessarily followed by a vote. Another related issue, which further illustrates the preeminence of the President of the Republic, concerns the appointment of the Prime Minister. While, in the republican tradition, the Head of Government would always come from Parliament, the preeminence of the President of the Republic has allowed ‘external’ appointments as shown with the choice of Georges Pompidou in 1962. By appointing one of his personal collaborators, who had never held a parliamentary mandate, De Gaulle signified to the National Assembly its diminished role in the appointment of the Prime Minister. Concurrently, the responsibility of the Prime Minister towards the President of the Republic has evolved in practice through the interpretation of certain constitutional provisions. The President of the Republic has repeatedly demanded the resignation of the government without the National Assembly having managed to pass a motion of censure—as was the case for the resignation of Michel Debré in April 1962, Jacques Chaban Delmas in July 1972, Pierre Mauroy in July 1984, Michel Rocard in May 1991, and Edith Cresson in April 1992. In this context, the parliamentary nature of the regime has lost its relevance with a President of the Republic appearing as the real head of the Executive albeit not responsible before Parliament. If the government is constitutionally responsible before the National Assembly, it is in fact only before the President of the Republic. The parliamentary majority is primarily intended to support the presidential policy. Before the 2000 constitutional amendment (See below), the legislative election was in fact an election confirming the result of the presidential election which main function was the election of a political majority to give the President of the Republic and his government the means to govern.
2. The Periods of Cohabitation

47. The defeat of the presidential majority in the legislative elections of 1986, 1993 and 1997 resulted in periods of so-called cohabitation. Indeed, the President of the Republic, whose party was voted in the opposition, had to appoint a Prime Minister within the parliamentary majority. Such periods marked the return to a more parliamentary functioning of the regime with the President of the Republic losing his position as leader of the Executive since the legitimacy resulting from the presidential election was somehow erased by the result from the legislative elections. In such situations, the Prime Minister was no longer responsible to the President of the Republic and could govern by relying only on the National Assembly, which thus appeared as the sole and only source of legitimacy for the government.

48. Nevertheless, the President of the Republic retains important prerogatives during a period of cohabitation as per the constitutional provisions dedicated to his powers such as, for example, the presidency of the Council of Ministers and the power of appointment of civil and military officials of the State. These significant powers of the President of the Republic in periods of cohabitation have no equivalent in a parliamentary system where the role of the Head of State is of a formal nature, generally limited to the authentication of the acts of the Head of Government. This institutional situation is a reminder of the atypical nature of the Fifth Republic, which is neither presidential nor parliamentary—hence the numerous terms attributed to the French regime from ‘hybrid’ to ‘mixed’, or ‘semi-presidential’. Without changing this état de fait, the alignment of the presidential term of office to five years (instead of seven) with that of the parliamentary mandate with, correlatively, a coincidence of both elections, was an attempt to reduce the risk of cohabitation, as it would be unlikely that the French people vote for a completely different majority a few weeks apart.

§ 3. State Territory

49. The territorial organization of the French Republic is rather complex as it is based on different layers of local authorities endowed with a range of various powers.

I. A Complex Territorial Organization

50. The local authorities of the Republic are the municipalities, the departments, and the regions, as well as the local authorities with special status and overseas territories (Article 72 Constitution). These three levels of local government constitute both local authorities and subdivisions of the State administration, which representatives are, respectively, the mayor, the prefect and the regional prefect. As a result, the organization of deconcentrated State services is based on the same territorial divisions.

25 The three periods of cohabitation were as follows: 1986-1988 : François Mitterrand (President) and Jacques Chirac (Prime Minister);1993-1995 : François Mitterrand (President) and Édouard Balladur (Prime Minister);1997-2002 : Jacques Chirac (President) and Lionel Jospin (Prime Minister).
26 Constitutional Law No 2000-964 of 2 October 2000 on the term of office of the President of the Republic.
27 See below Part III. The State and its Subdivisions.
II. Powers of Local Authorities

51. The principle of free administration of local authorities is constitutionally guaranteed and shall be exercised ‘under the conditions prescribed by law’ (Article 72 paragraph three Constitution). This principle applies both to the relationships of local authorities with the State but also to those relationships between local authorities. As a result, there can be no supervision or guardianship of one local authority over another. Since the beginning of the decentralization process, Parliament has endeavored to organize homogeneous blocks of powers, specific to each level of local authorities. Therefore, the municipalities exercise their main powers in the areas of urban planning, housing and the environment. The departments are responsible for two major areas, namely social action (i.e., childhood, disabled and elderly) and planning (i.e., rural equipment, sea and inland ports, departmental roads). The powers of the regions essentially cover economic development, planning and non-urban transport. However, many competencies such as those related to sport activities, tourism, the promotion of regional languages, or education, still happen to be shared between different levels of local authorities. For example, in the field of education, primary education is the responsibility of the municipalities, secondary education of the departments, and higher education of the regions. The 2003 constitutional amendment also established the regulatory power of local authorities, which may, under the conditions provided for by law, contribute to the exercise of local powers (Article 72 third paragraph Constitution).

§ 4. Population and Demographics

52. In February 2018, the population of France is 65.1 million inhabitants for a total land area of 547.56 Km² (i.e., 211.413 sq miles). The population density is thus 119 per Km². The French population has increased by over 2 million between 2010 (62.8 million inhabitants) and 2018, and is forecast to reach more than 70 million by 2050. This increase is not due to immigration—the net migration being only slightly positive—but to a natural dynamic thanks to a favourable fertility rate of 1.98 children per woman of childbearing age, the highest in the EU with that of the Republic of Ireland which is, however, due to slightly decrease over the years. Yet, the demographic dynamism in France does not concern all the territory. No less than twenty departments on the French metropolitan territory, including Ardennes, Cantal, Haute-Marne, Hautes-Pyrénées, Lozère, Nièvre, Orne, and two overseas territories, namely Martinique and Guadeloupe, are concerned by a decrease of their inhabitants, while five others—Manche, Moselle, Seine Maritime, Somme, Vendée—are just able to stabilize their population. Most of these areas are located on a diagonal from the Ardennes to the Massif Central. The French population tends to increase only in certain places, in a smaller number of departments including important regional cities. Furthermore, one out of five French people lives in one of the hundred most populated cities in France. However, migrations do not concern the centre of these big cities but rather their periphery. The development of economic activities and the need to build accommodation for new workers in departments with strong demographic growth strengthens the phenomenon of ‘peri-urbanization’. Overall, 80.5 percent of the French population is urban (i.e., 52.9 million people).

53. The median age of the population in France is 41.4 years, set to increase to 44.3 by 2050. The proportion of the population aged 65 and over has continually increased since the start of the 1990s,

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28 The figures are based on the latest UN estimates (February 2018). See <http://www.worldometers.info/world-population/france-population/> accessed on 11 February 2018.
from 14 percent in 1991 to 19 percent in 2016. The increase accelerated from 2011 when the first generation of baby boomers born in 1946 turned 65 years old. In parallel with this increase, the proportion of those under 25 years of age has been declining for the last quarter of century, from 35 percent in 1991 to 30 percent in 2016. In terms of economic activity, the last survey puts the labour force at an estimate of 28.7 million people aged 15 and over in metropolitan France, with 25.8 million of employed people and 2.9 million of unemployed people, that is a rate of 9.7 percent of unemployed. The employment rate is thus rather low in France as compared to other European countries with, however, a higher employment rate for women than the European average.

Selected Further Reading

On French Constitutional History


Jacques Chapsal, La vie politique en France de 1940 à 1958 (PUF 1996).


Gérard Conac, Xavier Prétot and Gérard Teboul (eds), Le préambule de la Constitution de 1946 (Dalloz 2001).

Gérard Conac, Marc Debene and Gérard Teboul (eds), La Déclaration des droits de l’Homme et du citoyen de 1789 (Economica 1993).


Alain Laquièze, Les origines du régime parlementaire en France (1814-1848) (PUF 2002)


Michel Troper and Lucien Jaume (eds), *1789 et l’invention de la Constitution* (Bruylant LGDJ 1994).


**On the Characteristics of the French State**


Jean Massot, *Alternance et cohabitation sous la Cinquième République* (La Documentation française 1997).

Bertrand Mathieu and Michel Verpeaux (eds), *La République en droit français* (Economica 1999).


Dominique Schnapper, *De la démocratie en France : République, nation, laïcité* (Odile Jacob 2017).


Patrick Weil (ed.), *Politiques de la laïcité au Xxème siècle* (PUF 2007).
On the State Territory

See below Selected Further Reading under Part III. The State and its Subdivisions.

On Population and Demographics

Virginie de Luca Barrusse, *La population de la France* (La Découverte 2016).
Selected Bibliography

Publications in English


Publications in French


Electronic copy available at: https://ssrn.com/abstract=3349254
Older Classics
Below is a selected list of landmark works by famous French constitutionalists.


Periodicals
Below is a selected list of journals specialized in French constitutional law.

Constitutions (Est. 2010).

Droits (Est. 1985).

Jus Publicum (online only, est. 2008).

Les nouveaux Cahiers du Conseil constitutionnel (Est. 1997).

Pouvoirs (Est. 1977).

Revue française de droit constitutionnel (Est. 1990).

Revue du droit public (Est. 1894).

Websites
Below is a selected list of official websites relating to the institutional, political and constitutional organization of France.

Constitutional Council [www.conseil-constitutionnel.fr]
Council of State [www.conseil-etat.fr]

Court of Cassation [www.courdecassation.fr]

‘La Documentation française, la marque reconnue d’un éditeur public’ [www.ladocumentationfrancaise.fr] is a public publisher which specializes in publications in the area of law and public administration.


National Assembly [www.assemblee-nationale.fr]

President of the Republic [www.elysee.fr]

Senate [www.senat.fr]

‘Vie publique, au cœur du débat public’ [www.vie-publique.fr] gives access to many official publications and offers the possibility to track legislation in progress.