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Part 1

The two foundings of the Fifth Republic

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The compromise of 1958

To contemporaries, the conditions in which the Fifth Republic came into being contrasted very favourably with those of 1946 when its predecessor was created. The new Republic gave striking proof of its efficiency. Whereas two constituent assemblies and twelve months' discussion had been needed to found the Fourth Republic, it took de Gaulle's government barely three months, from the date the National Assembly entrusted it with the task, to adopt a text, and the new institutions were ready to come into operation by the end of 1958 as had been promised. Yet the new Republic, despite reflecting de Gaulle's ability to gain acceptance for the ideas spelled out in his 1946 Bayeux programme, also bore the marks of the compromise which the political realities of the time had required him to accept. It was the pressure of circumstances, and in particular the Algerian war, that caused the initial evolution of institutional practice followed, in the constitutional reform of 1962, by a radical restructuring of institutional principle.

De Gaulle's government

For those who remembered the debates which marked the history of the Fourth Republic, the new political situation that came into being in early June 1958 must have seemed remarkable. In the transition period that lasted until January 1959, de Gaulle, the relentless critic of the 'system' of the Fourth Republic, found himself its prime minister, invested in conditions of perfect legality by the National Assembly on 1 June by 329 votes to 224. The institutions of the Fourth Republic remained in place, and President Coty saw out in the solitude of the Elysée a *septennat* (seven-year term) that had begun four years earlier and was to end – with his agreement – on the election of the first president of the Fifth Republic. Meanwhile the National Assembly, elected in January 1956 and the corner-stone of the doomed regime, lived a shadowy life in permanent recess; it had accepted, in June, its own exclusion from affairs. For it was only the title of prime minister that made Charles de Gaulle the successor of Henri Queuille, Joseph Laniel or Guy Mollet. The three laws that were

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voted on 2 June and promulgated the next day gave the new prime minister resources that none of his predecessors would have dared dream of: alongside the special powers for Algeria which prime ministers had enjoyed since 1956, de Gaulle was granted full powers for a six-month period (the time he felt he needed to realise his new institutional structure), and a constitutional law modified the revision procedures laid out in article 90 of the 1946 constitution by granting the government power to draw up a project which would then be submitted to a referendum. De Gaulle's ministry respected the legal forms of a government of the Fourth Republic; but it did not in any sense respect the spirit of a regime whose defining characteristic was the pre-eminence of parliament.

The same distinction between form and substance characterised the composition of the government. On the surface it looked as if de Gaulle showed scrupulous respect for the sharing-out of posts and the balance of parties for which he had, until recently, expressed such ostentatious disdain. The evidence is plain. Four ministers of state represented the principal political forces within the National Assembly (the communists, of course, being excluded) – the socialist Guy Mollet, the MRP Pierre Pflimlin, the independent Jacquinot and, in the absence of a radical (for the party had split into at least three factions), a cousin of the family in the person of the Ivory Coast leader Félix Houphouët-Boigny, president of the African Democratic Rally (RDA) that was linked to the UDSR. The same concern to reassure the parties was evident in the distribution of portfolios, with each group receiving the sector to which it was traditionally linked. Antoine Pinay, the leader of the moderates and idol of the small saver, went to the Finance Ministry, while the radical Berthoin, the champion of *laïcité*, was given Education, and the social concerns of the MRP were acknowledged by the presence of Paul Bacon at the Ministry of Labour. Even the absences were significant. Only Gaullists figured in the ministerial team. Michel Debré, a senator who in the Fourth Republic had edited a violently anti-regime journal, the *Courrier de la colère*, became Minister of Justice with specific responsibility for drawing up the new constitution; the distinguished writer André Malraux was Minister of Information; and the ultra-loyal Edmond Michelet took over the Ex-Servicemen's portfolio. De Gaulle could not have signalled more clearly that his coming to power was not the victory of the 'social republicans' who had supported him in the Fourth Republic. Indeed all their leaders – Gaston Palewski and Jacques Chaban-Delmas, Christian Fouchet and General Catroux, General Koenig and General Billotte – were excluded from government, thereby paying the price for their participation in the 'system'. But the most noteworthy absence was that of Jacques Soustelle, who was regarded as the parliamentary leader of the Gaullists and also as the leader of the pro-French Algeria forces; his exclusion was all the more significant given that

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the crowds of European demonstrators endlessly chanted his name during de Gaulle's visit of 4–6 June to the three trans-Mediterranean *départements*. It was not until 7 July that Soustelle entered the government as Minister of Information (thereby replacing Malraux), and even then de Gaulle balanced this choice of a French Algeria militant with that of the socialist Boulloche, who became minister delegate to the prime minister's office.

This traditional interpretation of the de Gaulle government, though undeniably accurate, is also very superficial. For the reality of government power lay elsewhere and, to begin with, in the appointment to those posts which de Gaulle regarded as essential to the life of the state not of political figures, but of technicians whose role was to put into effect the prime minister's policy decisions. Thus the diplomat Maurice Couve de Murville became Minister for Foreign Affairs, the Seine prefect Pelletier took over the Interior and the *polytechnique* graduate Pierre Guillaumat, hitherto responsible for atomic research, was appointed Minister of the Armed Forces under the overall authority of de Gaulle, who reserved for himself the portfolio of National Defence. Even more significant was the organisation at the Hôtel Matignon (the prime minister's official residence) of a private office, composed of reliable mandarins and Gaullist loyalists, which often seemed to be the real government of France, making decisions which the ministers assembled at the Elysée simply ratified. At the head of this hidden ministry was Georges Pompidou, who brought together the team which had kept the Gaullist flame alive in the rue de Solferino during the 'crossing the desert' years first with the RPF and then with the social republicans – Olivier Guichard, Pierre Lefranc, Jacques Foccart. De Gaulle viewed such people ocupying governmental offices with some irritation so great was his fear that party activism would spill over into the service of the state. Yet, on the other hand, he was wholly content to fill his private office with senior civil servants to act as advisers in the areas of prime importance and plan out the measures that would found the new regime. Raymond Janot, general secretary of the Conseil d'Etat, acted for de Gaulle on constitutional matters; Roger Goetze, an inspector of finances who had been Mendès France's collaborator in 1944–5, was given the task of drawing up a recovery plan for France's public finances; Jean-Marc Boegner was technical adviser for foreign affairs; and the historian Charles Morazé took charge of a 'think tank'. General Fourquet was one of a number of serving officers employed, and a secretariat for Algerian Affairs was established at the rue de Lille, under the direction of René Brouillet with the collaboration of Bernard Tricot.

This two-tier government had to deal with an enormous agenda, since its goal was nothing less than providing France with a new constitution while simultaneously coping with problems whose urgency would not allow for any delay – Algeria; the future of the French empire (an issue with

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direct institutional implications); international relations which would not conveniently go away while the constitution was being drawn up; financial recovery, and so on. That the government had to deal with the whole range of problems during its short period of existence makes it one of the most productive ministries in French political history. Yet its fundamental achievement, over and above the imperatives of the immediate situation, remains the creation of new institutions.

The drawing up of the new institutions

The speed with which the institutions of the Fifth Republic were drawn up is certainly remarkable; but we must remember that the basic issues involved were far from new, and that the discussion of constitutional reform had never been absent from the preoccupations of the politicians of the collapsing Fourth Republic. The founding principles had been enunciated at Bayeux on 16 June 1946 and formed part of the core doctrine of Gaullism: separation of powers and the strengthening of the executive through the new role of the president of the republic, who thus became the corner-stone of the whole constitutional edifice. Onto this fundamental principle were grafted the various projects constructed during the Fourth Republic to 'rationalise parliamentarism', projects on which the leaders of the dying regime had worked. It is not without significance that Guy Mollet and Pierre Pflimlin, who were now ministers of state, had induced the Assembly to vote for a reform of this type on 27 May 1958. To these various sources must finally be added the undertakings that General de Gaulle had given both during his May negotiations with the leaders of the political parties (and in particular Guy Mollet), and in his replies to questions raised in the National Assembly on 2 June during the debate on the full powers law: the preservation of a parliamentary system and the rejection of a presidential regime, and thus the separation of the functions of prime minister and president, and the guarantee of a Chamber elected by universal suffrage.

Such were the bases on which the new constitution was elaborated, through a complicated procedure involving numerous actors. The most important was de Gaulle himself who, though faced with the urgency of Algeria, foreign affairs and financial questions, refused to leave to others the responsibility for preparing a text on a theme whose urgent necessity he had constantly proclaimed since 1946. He would write in his *Memoirs of Hope*: 'I directed the work of institutional reform.' Second in importance was the Hôtel Matignon team, composed of the four ministers of state (Mollet, Pflimlin, Houphouët-Boigny and Jacquinot) who represented the major political parties, and balanced by two jurists who represented General de Gaulle, the faithful René Cassin, vice-president of the Council of

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State, and Raymond Janot. This team held its meetings in de Gaulle's office and played a fundamental role in initiation and amendment. The third circle – grouped around the Minister of Justice, Michel Debré, and composed of members of the Council of State and of law specialists representing the ministers of state – drew up the texts which the Hôtel Matignon then discussed. In general the desire of Debré's group to emphasise the pre-eminence of the executive found itself, as a result of de Gaulle's arbitration, softened and balanced by the determination of the ministers of state to preserve the parliamentary form of the regime, an attitude that was supported, it must be said, by both the Minister of Justice and the prime minister. Begun on 19 June, the work of the ministerial teams progressed quickly, and resulted a month later in a first draft (the 'red book') setting out the guiding principles on which agreement would be reached.

At this stage in the preparation of the constitution a further body, the Constitutional Consultative Committee, intervened. This committee was the result of the 2 June text modifying the procedure for revision, a text which specified that the government must receive the formal advice of a consultative body in which an important place would be reserved for members of parliament nominated by the relevant commissions of the National Assembly and the Council of State. Established on 2 July, the Constitutional Consultative Committee had thirty-nine members, sixteen of whom came from the National Assembly (among them Paul Alduy, Philibert Tsiranana, Pierre-Henri Teitgen, Paul Coste-Floret), ten from the Council of State, and thirteen from government nomination, including Roger Frey, the ambassador Léon Noël and Paul Reynaud. The latter, an octogenarian, became, by virtue of his age, president of the committee. Between 29 July and 14 August, this assembly of jurists and experienced parliamentarians submitted the 'red book' to a minute scrutiny that infuriated the Gaullist Léon Noël. The latter fulminated against what he regarded as a return to the sort of parliamentary games that proved the 'noxiousness of the regime that had collapsed in May' and which had no place in a forum that he considered should be wholly dedicated to the construction of a new regime. In reality the principal debates focused on the incompatibility of ministerial office and parliamentary mandate (which the committee tried in vain to abolish); on the composition of the electoral college charged with choosing the president of the Republic; on article 14 (which would become article 16) of the constitution that enabled the head of state to take 'the measures which the circumstances required' whenever a grave crisis threatened the nation; and on the future structure of the proposed Community. On 8 August, de Gaulle visited the committee, where he offered reassurance to the various parties and replied to questions but gave no ground on what he regarded as the essential issues. Considering that parliamentary opinion had had ample opportunity to express

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itself, he then submitted the text to the council of ministers on 3 September 1958. The council gave its approval, though not without a few reservations on the part of President Coty who played his last political role on that day.

In its essentials the final text clearly reflected the views which de Gaulle had hammered home over the preceding twelve years. This was certainly the judgement advanced in his *Memoirs of Hope*. 'What had to be done was basically that which is known as the Constitution of Bayeux since it was there, on 16 June 1946, that I had laid down the route that France needed to take.' In claiming this de Gaulle was undoubtedly correct, and it needs to be stressed that in the post-13 May trauma, when the whole of France was convinced that, as Jacques Fauvet wrote in *Le Monde*, 'the Republic had only one defence between itself and Fascism and that was the physical person of General de Gaulle', no one sought to stand up against his judgement. Yet it remains the case that de Gaulle did take account of the opinions of jurists and parliamentarians, that he showed surprisingly good grace in coming to terms with the forces that he had combated, and that Guy Mollet was entitled to regard himself as one of the 'fathers' of the new constitution, even if he was soon to be disillusioned with his progeny. The text that de Gaulle submitted to the country in the early days of September 1958 bore all the hallmarks of a compromise.

The constitution of 1958

The constitution begins with a number of simple ideas articulated by de Gaulle or by the representatives of those political forces whom he had involved in its preparation: the separation of powers (here clearly meaning the end of the subordination of the executive power to the whim of the Assembly); and the maintenance of a parliamentary regime (meaning a government that would remain responsible to the Assembly). These two principles were not by definition incompatible, but they could have very different consequences. If the emphasis was laid on the first, the result could well be an American-type presidential system in which power resided in the executive. Yet the Bayeux speech had ruled out this solution, and so indeed did the undertakings given on 2 June and the promise to draw a distinction between president and accountable prime minister. But if the second principle were to triumph, the outcome would be a regime similar to the Third and Fourth Republics, and this was something that de Gaulle was determined to avoid. Thus the logic of the new regime resided in an ambiguous, half-way system which constitutionalists baptised a 'regenerated parliamentary regime', but whose working practices would perplex the theoreticians of parliamentary government.

What struck contemporaries and appeared to be fundamental was the new importance accorded in the institutions to the president of the

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Republic. It was immediately significant that the presidency was defined in the second chapter of the constitution, straight after the definition of sovereignty – in the 1946 constitution it had been dealt with only in section six. Though expressed with more force than previously, the definition of its role differed little from the tradition of the Third and Fourth Republics: guarantor of the continuity of the state, of national independence and territorial integrity, the president was responsible for ensuring the respect of the constitution and, through his arbitration, the proper functioning of public powers. The real innovation resided less in the enumeration of his functions than in the mechanism for his appointment and the resources he was given to enable him to carry out his tasks. General de Gaulle was determined that the president should be free from the pressure of parliament; and to ensure this the latter would no longer choose the former. Thus, in line with his Bayeux proposals, he included in the new constitution a provision that the president should be selected by an electoral college in which the members of Parliament would certainly be present, but where they would be submerged by a mass of departmental councillors, representatives of the assemblies of overseas territories, mayors and their deputies, and delegates of municipal councils – in total some 80,000 *notables* resembling the delegates used to elect the Senate.

Chosen by these local notables, the president of the Republic had far greater resources than his predecessors with which to fulfil the role assigned to him by the constitution. It is true that the nomination of the prime minister and, on the latter's proposal, of the other members of the government (article 8), the chairmanship of the council of ministers (article 9) and the promulgation of laws (article 10) all formed part of the traditional prerogatives of the head of state. But there were three constitutional innovations. Article 11 enabled the president, on the proposition of the government or the two assemblies, to submit to a referendum any bill dealing with the organisation of public powers, and thus gave him the means to address the country directly. Article 12 enabled him, after consultation with the prime minister and the president of the two assemblies, to dissolve the National Assembly. Finally, article 16 granted him exceptional powers when the institutions of the Republic, the independence of the nation, the integrity of its territory or the fulfilment of its international obligations were threatened. (The reference to May 1940 is clear.) It is obvious that the powers of the president of the Fifth Republic were quite different from those of his predecessors in the parliamentary Republics. The presidency was indeed that corner-stone which de Gaulle had described at Bayeux.

The gain in power for the executive was balanced by parliament's loss of resources and influence since it was to put an end to parliamentary omnipotence that de Gaulle had fought for the 'separation of powers'.

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Composed, as in the preceding Republics, of two chambers, parliament had its role reduced by the constitutional texts even before constitutional practice weakened it still further. The National Assembly was elected for five years by universal suffrage and found itself limited to legislative and budgetary functions; its powers of initiative were reduced, and its ability to control government strictly supervised. Deputies were no longer allowed to introduce measures reducing public resources or increasing public expenditure. The procedure of interpellations was abolished. A government could henceforth be defeated only if a vote of censure received an absolute majority, or if a (similarly absolute) majority refused to support a confidence motion put forward by the government. Finally, the National Assembly controlled neither the dates of its sessions (which were laid down in article 28 of the constitution), nor its timetable, which was effectively determined by the government.

The second chamber reverted to its Third Republic name of Senate. But it did not regain the eminent status it had enjoyed before 1940, even though it is fair to say that a certain strengthening of its position relative to that in the Fourth Republic did take place. Through indirect suffrage in departmental colleges comprising deputies, departmental councillors and representatives of municipal councils, the senators were elected for nine years, with one third of the Senate being renewed every three years. Article 45 of the constitution gave it a very limited role in the legislative process. Where disagreements occurred between it and the National Assembly, bills passed twice between the two chambers in a procedure called the *navette*. If no agreement was reached, a joint commission attempted to establish a common text; in case of failure, the ultimate decision rested with the National Assembly. Yet, in the circumstances of a vacancy in the presidency, it was the president of the Republic who acted as caretaker.

A good idea of the relative political clout of president and parliament can be gained by studying the position of the government, which was at the crossroads of the two institutional powers since it was appointed by the president but responsible to the National Assembly. Its attributes were crucial, with article 20 stating that it 'determines and carries out the policy of the nation'. There was nothing in the texts to stop a prime minister, supported by a majority of the National Assembly, using his constitutional authority to impose a policy opposed by the head of state. This possibility of a two-headed power, of a dyarchy was (and is) a constant risk in the constitutional settlement of the Fifth Republic given its juxtaposition of a parliamentary regime and a presidential pre-eminence that owes more to principles than to the written text. In this respect the constitution appeared susceptible to differing interpretations depending on the power relationships that existed at any moment between head of state and parliamentary

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majority. Given the circumstances of 1958, however, such a hypothesis looked to be narrowly academic. Moreover, the clause (article 23) which prevented the cumulation of ministerial office and a parliamentary mandate was designed to loosen the links between parliament and government. And in the last analysis, it was de Gaulle's actions between 1958 and 1962 that were to determine the issue of whether government derived its existence from parliament or president.

The constitution of the Fifth Republic also contained an innovation, of whose significance contemporaries were not fully aware. It created a constitutional council, modelled on the United States Supreme Court, responsible for supervising the correct functioning of elections (and in the first place that of the president of the Republic), and for supervising the constitutionality of laws. The council had nine members, appointed for nine years, with one third renewable every three years. The president of the Republic appointed three of the members, as did the presidents of the two assemblies. The council's existence testified to the determination of the constitution framers to place their creation above controversy and political conflict and to inscribe in marble a set of procedures that would last, if not for ever (French constitutional history did not allow for any such illusions), then at least for a long period.

There still remained the task of persuading the French people to accept the text in the referendum which had been promised on 2 June. This was an electoral test of the utmost significance. A 'no' vote would have consigned de Gaulle's project to oblivion, whereas baptism by universal suffrage would give the unchallengeable unction of democratic legitimacy to a proposal that until now rested solely on the historical legitimacy that de Gaulle enjoyed, and the dubious opportunity that had been offered by 13 May.

The referendum of 28 September 1958

On 4 September in the Place de la République, General de Gaulle presented to the French nation the constitutional document which the council of ministers had adopted the day before. The people were to make their decision on 28 September. To respond to the accusation of Bonapartism which the extreme Left had made against de Gaulle ever since 13 May, the whole repertoire of republican symbolism was brought into play: the date was the anniversary of the proclamation of the Third Republic by the republican deputies of Paris in 1870, and the place was one dedicated to the regime and ornamented since 1883 by the monument to the Republic (whose artistic mediocrity should not obscure the interest of Dalou's bronze bas-reliefs which surround the base and portray the struggles of the Republic). The speakers' podium was decorated with the

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