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## *The “Grévy Constitution” and the “de Gaulle Constitution”: Two Directions for the Relocation of Presidential Power in the Constitutional History of France\**

### Abstract

The paper deals with two different political interpretations of presidential power under the Third and Fifth French Republics, which clearly changed the position of the head of state in relation to the letter of constitutional acts that were in force at the time. Both of these interpretations were imposed by the presidents in office in the first years after the proper structures of the system of government had been established. The former (commonly known as the “Grévy Constitution”) led to the weakening of presidential power, and the latter (described as the “de Gaulle Constitution”) to its strengthening. Particular attention is thus paid to the formation of such particular unwritten norms of constitutional law in rationalized and non-rationalized parliamentary systems. In both cases, their basic feature turned out to be the ability to significantly modify the parliamentary system of government. In the last part of the paper, the stability and durability of the above-mentioned political interpretations of the aforementioned Constitutions are discussed. It is indicated that, in both cases, there were attempts to challenge these non-codified standards. Although the causes of such actions were different from each other, neither brought any meaningful success.

**Keywords:** Jules Grévy, Charles de Gaulle, France, Third Republic, Fifth Republic, constitution, presidential power, parliamentary system, rationalization, political responsibility of government

## 1. Introduction

Constitutional rules cannot be regarded as fully autonomous in relation to the dynamic and multifaceted socio-political context surrounding them. In countries where the con-

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stitution is an act of supreme legal force, it will certainly be easier, but not always fully justified, to point to such autonomy. On the other hand, at the opposite end, there is the typical non-codified constitution, which, firstly, is not based on a formal criterion and, secondly, cannot be limited to positive law but also covers constitutional conventions, judicial decisions and other unwritten sources. While still seeing these extreme options, it is worth trying to identify specific intermediate approaches which, on the one hand, will not be very distant from the concept of a constitution as a formally distinct piece of legislation (or even several such pieces of legislation in the case of a so-called composite constitution) and, on the other hand, will see it as somewhat saturated with strictly political interpretations, which ultimately become an integral part of it. This indirect approach would mean a specific constitution in the substantive sense. It is not a flexible, dispersed constitution, which is the opposite of the constitution as a fundamental law of the State, but a constitution in the substantive sense, in which the codified constitution, having the supreme legal force, is only one of the components. Looking from this perspective, the latter is simply included in the former.<sup>1</sup>

Of course, the interpretation of the constitution by the holders of the most important offices in the structure of the system of government (in particular, by the head of state and the prime minister, insofar as a given system provides for the existence of this position) affecting the practice of government is always incorporated into the content of the constitution to some degree. This is because, due to its specific location in the political space, it is always an act embedded in a specific environment. In some cases, however, the constitution as seen through its literal wording and the constitution as applied stand apart from each other to a degree that clearly seems to be above average. This especially concerns the system of government it regulates and the scope of powers of the bodies located within it. Moreover, the practical consolidation of the latter, i.e. the applied constitution contrasted with the written constitution, results in the applied constitution being perceived as the right one and, in principle, even the only possible one, while the adopted constitution shortly after its enactment becomes at best a “half-finished product” in the constitutional process that has just begun.

This approach to the provisions of basic law – one which incorporates such “deformation” within the constitution in the broader sense – can be identified, in particular, with reference to the two French systems of government: the Third Republic and the Fifth Republic. These two Constitutions, adopted in 1875 and 1958, respectively, have a common feature. This is the relatively rapid remodeling of the presidential power structure, which was already carried out in the first years of these Constitutions in force. The reference point by which the scale of this approach can be assessed is the text of the Constitution itself – either in its original version (as in the Third Republic) or already modified to some extent, provided that such a modification does not constitute a legitimization of the transformed constitutional practice but still remains only the starting

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<sup>1</sup> As Jarosław Szymanek notes, “[...] While the formal constitution is, at the same time, the textual substrate of the basic law itself, the constitution in the substantive sense is composed of specific norms, principles, rules and values – decoded on the basis of the formal constitution –, and next to them also the way of their practical application, which is extremely important, because it can go in different directions.” Szymanek, “Interpretacja”, 154.

point of this kind of "deformation" (as in the Fifth Republic after the introduction of the general election of the head of state in 1962).

In the Third Republic, such a remodeling was aimed at weakening the office of the president in relation to the constitutional structure adopted in 1875. As a result, they moved away from the dualist parliamentarism, also known as *parlementarisme orléaniste*, towards the monist parliamentarism, and this in a version close to the assembly government system. In the Fifth Republic, on the other hand, the direction of transformation was the opposite. The strengthening of presidential power consisted precisely in emphasizing the systemic components associated with dualist parliamentarism (especially in its original, monarchic form), which ultimately led to the establishment of the semi-presidential system in a variant that can be described, due to the actual strong position of the head of state, as complete or strong. Semi-presidentialism thus understood was therefore an effect of both the Constitution itself and the constitutional practice which affected relations within the triangle of president-government-parliament.

The reinterpretation imposed in the Third Republic used to be, according to the formula of the French constitutionalist Marcel Prélot, referred to as the "Grévy Constitution" (*constitution Grévy*),<sup>2</sup> which, as a result, significantly weakened the position of the head of state within the actually functioning system of government, in particular Parliament as the political representation of the sovereign.<sup>3</sup> On the verge of the Fifth Republic, one can see a similar, although going towards the opposite direction, significant relocation of presidential power in relation to the text of the very Constitution itself. To identify this redefinition of the model of presidency, the phrase "de Gaulle Constitution" was used. While the term "Grévy Constitution" is well-established in French and foreign literature on the subject, and it would be difficult to characterize the specificity of the exercise of power in the Third Republic, the latter does not have such character. Even if it can be encountered in literature (more often as the "Gaullist Constitution" [*constitution gaulliste*] than "de Gaulle Constitution"), it is used more to describe the entire political project created and implemented by the Gaullist camp at the end of the 1950s than as an indication that the actually applied Constitution clearly differed from the written one.<sup>4</sup> In this article, both these terms are seen through the prism of a similar systemic phenomenon. It is a situation in which the newly adopted Constitution is very strongly marked by interpretation or a comprehensive systemic vision of its first or one of its first interpreters, i.e. a politician who, due to his position, e.g. president, is able to impose an unobvious way

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<sup>2</sup> Avril, Gicquel, *Lexique*, 56.

<sup>3</sup> The term "Grévy Constitution" was therefore born much later than the very systemic practice which it served to describe. The perception of the political dimension of constitutional law, in some cases in opposition to strictly normative law, has already marked the doctrine of the Third Republic. This also applies to the first two decades after the adoption of the constitutional laws of 1875 (before publication of Adhémar Esmein's *Éléments de droit constitutionnel* in 1896), although such an extended understanding of the term "constitution" was not, in principle, elaborated upon theoretically at that time. For more detail on this subject, see Lemaire, "La notion", 49–70.

<sup>4</sup> However, sometimes such an understanding of the term "Gaullist constitution" would be justified. It is sufficient to refer to the title of Pierre Avril's article, which, referring to the French systemic realities of the period of the first cohabitation (1986–1988), asked rhetorical questions about the end of the Gaullist Constitution, which, in itself, was already a strong suggestion that such a constitution can only be applied if the government is not in opposition to the president. See Avril, "Fin de la Constitution", 39–49.

of interpreting the role of the most important political institutions.<sup>5</sup> The basis of the study is therefore the assumption that a change in the constitutional paradigm (e.g. a departure from the supremacy of parliament within the institutional structure), which emphasizes the fundamental differences between the forms of the political system adopted in the various periods of the functioning of a given state and may be accompanied by informal constitutional changes (*changements constitutionnels informels*) taking place within the system. It can be said that one such informal development was the “Grévy Constitution”, which began to be applied within the broader paradigm of supremacy of the legislature.<sup>6</sup> Such changes can sometimes also be attributed a relatively permanent nature, which only deepens the dynamics of the functioning of the constitutional solutions. The article is based on the assumption that a similar view can be taken of the “de Gaulle Constitution.”

Although the issue of the system of government of both the Third Republic and Fifth Republic has been repeatedly addressed in Polish literature, no extensive comparative research has been conducted regarding the phenomenon of the relocation of presidential power, common to both these political forms, as seen in the perspective of a kind of flexibility of constitutional norms at the initial stage of their application. In this respect, it is particularly important to establish the specificity of the “de Gaulle Constitution” as an interpretation imposed in the 1960s. The “Grévy Constitution”, a concept that was already well-established in Polish and foreign literature, becomes a fundamental point of reference for this, allowing the presentation of similarities and differences. Most importantly, however, the issue under analysis should be seen from the perspective of the phenomenon of rationalization of the parliamentary system of government and, in particular, the two ways of presenting it in literature on the subject. Initially, rationalization was defined as growing regulation of the mechanisms of the parliamentary system at the constitutional level, which was to prevent its dysfunctional deformations in political practice.<sup>7</sup> After World War Two, the rationalization of the parliamentary system was already based on an incorporation of specific mechanisms to stabilize the government against the legislature (e.g. various tools of the executive branch’s influence on the course of legislative proceedings in the French Constitution of 1958).<sup>8</sup> Taking as a reference this systemic phenomenon, it should be noted that the Third and Fifth Republics are located at opposite poles. The former reflects the parliamentary system prior to the rationalization processes, while in the current French republican system, one can see the culmination of rationalization, taking into account its second fundamental phase. In this sense, the Fifth Republic is the antithesis of that initiated in the 1870s.

<sup>5</sup> In this context, the charisma of the founding fathers of the new system (*le “charisme” des pères fondateurs*) is of particular importance. See Quermonne, *Les régimes*, 41–2.

<sup>6</sup> Gren, *Le changement de paradigme constitutionnel*, 63–5.

<sup>7</sup> Thus, it was only a matter of comprehensively encapsulating the rules of the parliamentary system in constitutional provisions, which in itself could prevent its potential distortions in political practice. Thus, it was about, as Boris Mirkine-Guetzévitch writes, “covering the entirety of political life by the structure of written law.” See Mirkine-Guetzévitch, *Les constitutions européennes*, vol. 1, 17. As Kazimierz Michał Ujazdowski points out, such rationalization did not yet result in the limiting of the position of parliament. Instead, it was confronted with the parliamentarism of the period of constitutional monarchy. See Ujazdowski, “V Republika”, 46.

<sup>8</sup> For more on the directions of rationalization of the parliamentary system, including consideration of the French experience, see Jakubiak, *Francuska izba druga*, 37–50.

The core objective of this study must be seen from the above perspective. It is about showing the common denominator of both French systems of government, despite the fundamental differences that have been pointed out, namely the lack of their firm juridical stabilization, as a relocation of presidential power took place in both of them. It went, of course, in two opposite directions, but this does not change the fact that in each of the two systems, there was a clear deviation from the constitutional model of the presidency. The essential argument of the article is therefore as follows: the vulnerability to the non-institutional deformation of presidential powers, common to the Third Republic and Fifth Republic, reveals the significant inconsistency of the rationalization process in the system established in 1958. Although the Fifth Republic has undergone the second phase of rationalization mentioned above, it may seem a bit paradoxical that some shortcomings have been revealed by rationalization in the meaning according to the first phase (stabilization by the further regulation of the structure of the parliamentary system). This is illustrated by the interpretation of the Constitution of the Fifth Republic, referred to herein as the "de Gaulle Constitution." Noticing this internal inconsistency of rationalization in the Fifth Republic is intended to contribute to current research on solutions within the former and present French political system. Against this background, the question arises as to whether a situation in which the reception of specific rationalization mechanisms is accompanied by a considerable susceptibility of the presidential model to modification by the very practice of exercising power constitutes a factor which undermines the strictly constitutional dimension of the rationalization process itself.

The fulfillment of the aforementioned goal, as well as the verification of the presented assumptions, requires the use of a vast set of research tools due to the need to refer both to the wording of the Constitution and to its application in practice. This includes both the interpretation of relevant constitutional provisions in terms of the doctrine of constitutional law and the consideration of interpretations made by presidential office holders. The main theoretical point of reference remains the parliamentary system in its non-rationalized version (the Third Republic) and the system built following rationalization efforts (the Fifth Republic). This has a significant impact on the perception of the relocation of presidential power under the two republican systems, showing that both of these systemic "shifts", even though similar in some respects, occurred within parliamentary systems that were theoretically very far apart.

## 2. Depreciation of presidential power in the "Grévy Constitution"

The Constitution of the Third Republic itself, and precisely the three constitutional laws of 1875 (the law of February 24 on the organization of the Senate; the law of February 25 on the organization of public authorities; the law of July 16 on relations between public authorities)<sup>9</sup>, is often perceived through the prism of continuity of the development of

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<sup>9</sup> "Loi constitutionnelles de 1875", 331–6.

the parliamentary system in France already during the period of restoration and the July monarchy, i.e. 1814–1848.<sup>10</sup> Despite the fundamental differences between the republican system and the system prior to Louis Napoleon Bonaparte's rule, the relatively consistent implementation of the principles of dualist parliamentarism was an important component of the system, indicating linear development of the parliamentary system in 19<sup>th</sup>-century France. The basic pillar of this model is the relatively strong political position of the monarch or republican head of state. It is based on the relevant constitutional competences, two of which are of particular importance in this respect. These are firstly the ability of the head of state to enforce the government's political responsibility and secondly the right to dissolve parliament. Especially this latter power is intended to provide the president with the basis to act as a body stabilizing the governance system. Over time, such a formulated concept of parliamentarism was replaced by the monistic model, which, by strongly depreciating the head of state, built the essential design of the system of government, with only the parliament and the government understood as a collegiate executive body.<sup>11</sup>

The Constitution of the Third Republic was the first French form of reception of the parliamentary system of government in a republican version, i.e. with the president as the head of state. It is difficult to unequivocally assess the concept of the presidency itself, which was included in two of the three constitutional laws mentioned above (i.e. excluding the law on the organization of the senate), at least on the basis of the two suggested models of the parliamentary system, namely dualist parliamentarism and monist parliamentarism. Both the law on the organization of public authorities and the law on relations between public authorities gave the president quite significant sets of competences. These include initiating and promulgating laws, delivering addresses to the chambers of parliament, convening chambers for extraordinary sessions, appointing individuals to civilian and military positions, negotiating and ratifying international agreements and, lastly, dissolving the parliament, which is a key power for the head of state located in a dualist parliamentary structure. The latter was intended to only be vested in the Chamber of Deputies. This competence could be effectively exercised only after the senate had reached a consensus, and the second chamber itself was not subject to dissolution (Article 5 of the law on the organization of public authorities). In particular, the power in question could constitute an argument justifying the view about the "Orleanistic spirit" that stigmatized the 1875 Constitution.<sup>12</sup> However, such an assessment would be too one-sided, because the position of the head of state was directly affected by the requirement for a member of the government to countersign each presidential act (Article 3 *in fine* of the law on the organization of public authorities). An indirect effect, on the other hand, can be seen in relation to the procedure of electing

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<sup>10</sup> Maurice Duverger defines the systems of that period as a semi-parliamentary monarchy. See Duverger, *Le système*, 73–86. For more detail on the birth of the parliamentary political responsibility of ministers in the periods of restoration and the July monarchy, see Turpin, *Le régime*, 7–22; Bidégaray, Emeri, *La responsabilité politique*, 39–43.

<sup>11</sup> This model of parliamentary system, assuming a strong position of the legislature, is referred to by Pierre Lalumière and André Demichel as democratic parliamentarism, in which they see a successor to the Orleanist concept, and they consider the popularization of electoral rights as a factor enabling the transition from one form to the other. For more detail, see Lalumière, Demichel, *Les régimes*, 58–73.

<sup>12</sup> Burdeau, *La troisième*, 31.



the head of state. This was not a general election but a vote in the houses of parliament convened as the National Assembly (Article 2 of the law on the organization of public authorities). Such an electoral procedure did not give the president real independence from the parliamentary chambers.<sup>13</sup>

All this characterized the ambiguous constitutional location of the presidency. It was brought closer to the dualist model by its relatively broad powers, including, above all, equipping the head of state with the right to dissolve the first house of parliament, while it corresponded with the monist concept in terms of the broadest possible scope of countersignature, as well as the use of the most unfavorable (if the need to ensure the president's political autonomy is taken as a point of reference) election formula.<sup>14</sup> Not only is this evidenced by the absence of universal suffrage, but also by the absence of a kind of intermediate option, namely the election of the president by a college of electors composed by members that are not members of the parliament. The Constitution of the Third Republic also did not contain regulations indicating the validity of the principle of dual responsibility of ministers, which is characteristic of dualist parliamentarism.

Thus, the Constitution of the Third Republic itself did not provide a firm basis for implementing the concept of a parliamentary system in the dualist form, but it still did not limit the president so much that the possibility of the evolution of the system in this direction could be rejected *a priori*.<sup>15</sup> This was demonstrated by the presidency of Patrice de Mac Mahon, who, as the first president of the Third Republic (1873–1879), tried to profile the practice of government so that the role of the head of state was resolutely outlined in it.<sup>16</sup> This is evidenced by the political crisis that occurred in 1877. Although it ended in P. de Mac Mahon's resignation, it nonetheless highlighted the controversy surrounding the Constitution adopted two years earlier, at the same time setting clear limits to the pro-presidential ambitions of the then head of state. At the heart of the dispute was P. de Mac Mahon's desire to have a fundamental influence on policy directions. The presidential criticism of the policy carried out by the Jules Simon government<sup>17</sup> led to J. Simon's resignation and the appointment of Albert de Broglie, who was much closer to

<sup>13</sup> Bujadoux, *La "Constitution de la IIIe République"*, 48.

<sup>14</sup> Jean-Marie Denquin points to both of these factors, arguing that the head of state was unable to do anything on his own, since ministerial support was required due to the countersignature requirement, while members of the government themselves depended on the parliament. Moreover, in the event of conflict with parliament members, electing the president by the legislature made it impossible to rely on any competing source of legitimacy for presidential power. Although the above-cited author argues that the president, once elected, could not be removed for political reasons, this could potentially lead to a situation in which the legislature would choose less skillful politicians for that position, which he refers to as reverse Darwinism (*le darwinisme à rebours*). See Denquin, *1958: La genèse*, 265–6.

<sup>15</sup> One can even find in literature a view that the constitutional laws of 1875 could potentially be a convenient starting point for the evolution of a system towards presidential version. See Rakowski, *System parlamentarno-gabinetowy*, 250. However, the claim of evolution towards presidency can only be adopted if it is understood narrowly, i.e. merely as an indication of the possible, even non-constitutional, strengthening of the presidency and not as a possible adoption of this system without amending the relevant constitutional provisions.

<sup>16</sup> Turpin, *Le regime*, 24.

<sup>17</sup> On May 16, 1877, P. de Mac Mahon demanded that J. Simon explain the government's actions. The president argued that he did this for the sake of responsibility for the country. He said to the prime minister: "Although I am not responsible, like you, before parliament, I am accountable to France, which today, more than ever, should remain in the field of my interest." As cited in Mayeur, *La vie*, 62–3.

the head of state. This resulted in resistance from the republican majority in the Chamber of Deputies, led by Léon Gambetta. The vote of no confidence resulted in the presidential decision to dissolve the First Chamber.<sup>18</sup> Despite the unfavorable results of the vote, P. de Mac Mahon attempted to establish a government against the parliamentary majority but was soon forced to submit to the verdict of voters, which was manifested in the formation of a government led by Jules Armand Dufaure. The fact that the republicans who had been in conflict with the president gained a majority in the senate (in 1879) meant that P. de Mac Mahon lost the remaining political base, which eventually forced him to recognize the rules of the parliamentary system with a limited role of the head of state and, consequently, to resign as President of the Republic.<sup>19</sup>

The failed attempt to profile the political system toward dualist parliamentarism was within the direct context of the relocation of presidential power under the “Grévy Constitution.” The address to parliament, presented after Jules Grévy assumed office as the successor of P. de Mac Mahon as president indicated that he would not attempt to fully accept the parliamentary system in the dualist variant. However, as a supporter of the particularly strong position of the parliament in the structure of public authorities, J. Grévy, elected by the republican majority, which led to the resignation of P. de Mac Mahon, went much further. This was not just a question of abandoning attempts to strengthen presidential power to an extent that clearly went beyond what the head of state was granted by the very constitutional laws of 1875. The next step was to renounce even what the president could use in accordance with the wording of the Constitution. Such a message was contained in J. Grévy’s statement, who on February 7, 1879, declared full compliance with the rules of the parliamentary system. The president stated that he “would never stand against the will of the people expressed by their constitutional bodies.”<sup>20</sup> This should be understood as the renouncing to apply Article 5 of the law on the organization of public authorities, which governed the dissolution of the Chamber of Deputies. J. Grévy’s declaration was therefore justified not so much as the promise of strict respect for the rules of the parliamentary system as the announcement of compliance with an informal constitutional change, a kind of material (actual) constitution. An important element of the then current formal Constitution was questioned, at least to some extent, although it was not distant from the structure of monistic parliamentarism, but it did respect the need to balance the legislature with the executive branch.

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<sup>18</sup> The republicans, who had a majority in the chamber, saw the decision as an attack on the majority built upon the outcome of parliamentary elections, while the monarchists who supported the head of state considered the move as a means of establishing unity within the executive power. See Cabanis, Martin, *La dissolution parlementaire*, 138. When deciding to dissolve the Chamber of Deputies, P. de Mac Mahon explicitly pointed out that it was caused by a difference of opinion on the direction of state policy between himself and the parliamentary majority. In his address, the president also referred to the so-called *Manifesto of the 363* (*Le manifeste des 363*), in which republican-majority deputies criticized his policies. See “Message du Président”, 89–91.

<sup>19</sup> Bodineau, Verpeaux, *Histoire*, 92–3; Gicquel, Gicquel, *Droit*, 487; Jamróz, *Ewolucja*, 77.

<sup>20</sup> As cited in Chagnollaud, *Histoire*, 192.



### 3. Appreciation of presidential power in the "de Gaulle Constitution"

The Fourth Republic (1946–1958) did not add much new to the structure of the system of government, although the system was fully legally defined at that time, departing from the fragmentary regulation of 1875. The first phase of rationalization was thus implemented. The need to strengthen the position of the head of state, which was to mark the transition from the Fourth to the Fifth Republic, was one of the pillars of the systemic reform carried out at the end of the 1950s. Thus, when the Constitution of the Fifth Republic<sup>21</sup> was drafted and adopted in 1958, there was no possibility other than making the president, as Michel Debré (the leading representative of the Gaullist camp and, at the same time, the chief editor of the Constitution) put it, the "keystone" (*la clef de voûte*) of the parliamentary system.<sup>22</sup> As early as in the 1940s and 1950s, General Charles de Gaulle repeatedly stressed the need to equip the president with two political systemic instruments, which were crucial for the reconstruction of the existing paradigm. These were: the dissolving of parliament and the convening of a nationwide referendum.<sup>23</sup> As a result of this form of equipping the head of state with additional powers, there was to be a revision of the previous assumption, related to the classical theory of representation, of the primordial or even superior position of the legislature in the system of the state.<sup>24</sup> Moreover, thanks to the systematic concepts advocated by M. Debré, mechanisms of rationalized parliamentarianism were introduced on a large scale. Its most important aspects included the clear strengthening of the government in legislative proceedings (in essence, by ensuring its control over their course), accompanied by a significant limitation of the substantive scope of the law and the subsequent extension of the government's legislative powers and the imposition of restrictions on the instruments of control of the legislature over that body (mainly with regard to the institutions of a vote of confidence and a vote of no confidence).

Thus, the foundations of the evolution of the political system in different directions were laid in the initial point of the Fifth Republic. Practice could have made the prime minister and the government led by him, as well as a competent and valued president, the key executive body in political terms. At this stage, and it should be borne in mind that the head of state did not come from general elections at that time, the president's domination was not yet a foregone conclusion. Constitutional practice could equally well have gone towards emphasizing the position of the government within the execu-

<sup>21</sup> *La Constitution*.

<sup>22</sup> "Discours de M. Michel Debré", 5.

<sup>23</sup> One can mention in this context, e.g., Ch. de Gaulle's Paris speech of June 25, 1950. "Discours prononcé à Paris", 385. During the Fourth Republic, Ch. de Gaulle repeatedly pointed to the need for systemic reform. However, the best-known speeches on systemic issues are those delivered in Bayeux (June 16, 1946) and Épinal (September 29, 1946), i.e. before the Fourth Republic was established.

<sup>24</sup> According to the classical theory of representation, the will of the deputies is understood as the will of the nation itself, so there is no need for the will of the sovereign to be shown in other ways, e.g. through the institution of referendum. Outside the structure of the legislature, the nation could not act as a real political entity. For more detail on this subject, see Szymanek, "Współczesne rozumienie", 231–3.

tive branch, which, after all, was the undisputed beneficiary of the constitutional reform carried out in the late fifties as a result of the extensive process of rationalization of parliamentarianism. If this scenario were to happen, a president with strengthened powers would be active but limited, i.e. he would be able to interfere in the process of governing in extreme situations but incapable of imposing his own policies on the government.<sup>25</sup> The above-mentioned directions of reorientations of the parliamentary system, which were carried out on the verge of the Fifth Republic, marked the abandonment of the clearly monistic formula of this system. A clear move towards dualist parliamentarianism was also made.<sup>26</sup> The return to this formula was not yet complete in 1958. While the restoration of the right to dissolve parliament (as in the Third Republic, this right does not apply to the Second Chamber) did not leave any doubt (as Ch. de Gaulle's earlier expectations were included in Article 12 of the Constitution), there were no compelling grounds for accepting that the principle of double political responsibility of the government had already been adopted at that time.<sup>27</sup> This body remained politically dependent upon parliament (as indicated by Article 20(3) of the Constitution), and responsibility to the president under the provisions of the Constitution alone was not provided for.<sup>28</sup>

It is at this point that one can see the specificity of the appreciation of presidential power in the early years of the Fifth Republic, part of which was also its peculiar relocation in relation to the text of the Constitution itself. *Toutes proportions gardées*, the press conference of Ch. de Gaulle of January 31, 1964,<sup>29</sup> can be considered under the conditions of the system constituted in 1958 an equivalent of J. Grévy's declara-

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<sup>25</sup> Nicolas Rousselier points to the two-way evolution of the system of the Fifth Republic – parliamentary (*la voie parlementaire*) and presidential (*la voie présidentielle*) while doing so in the somewhat broader context of the rationalization changes that took place in the systems of Western European countries after World War II. Rousselier, “Unpouvoir”, 17–22.

<sup>26</sup> Taking as a starting point the parliamentary model, in which the position of the head of state remains quite strongly neutralized, it can be said that the model was distorted during the Fifth Republic. This was due to the personal powers of the president combined with the absence of his political responsibility. According to Jerzy Stembrowicz, that system of government “was a compilation of solutions from various sources, the purpose of which was to change and limit the traditional rights and position of parliament in the system of authorities of the Republic.” See Stembrowicz, *Parlament*, 55–6. This way of viewing the Fifth Republic fits into the concept of semi-presidentialism, which to some extent combines elements of parliamentary and presidential systems. It should be noted, however, that the parliamentary system does not have a single, predetermined formula, as evidenced, for example, by the changes it underwent as a result of the process of rationalization. Therefore, one may share the view of Maria Kruk, who – when referring to the terms “parliamentary system” and “presidential system” – writes that both of them direct the system of government into appropriately wide “compartments” which can contain systems that are quite different from each other but have common constitutive characteristics. See Kruk, “Wprowadzenie”, 18.

<sup>27</sup> The view of Ch. de Gaulle himself expressed during the work on the Constitution of the Fifth Republic is characteristic. The then prime minister stated that the government was to be politically responsible only to parliament. See “2e séance”, 118. On the constitutional perspective on the government's political responsibility during the period of work on the Constitution of the Fifth Republic and the position expressed by Ch. de Gaulle on this issue, see also Debré, *Les idées*, 176–8.

<sup>28</sup> This constitutes the principal argument, raised by scholars in the field, in favor of the thesis that the system of the Fifth Republic is still a monist parliamentary system, with the only difference from the Third and Fourth Republics being that it is not mono-representative (*monoreprésentatif*) but bi-representative (*bireprésentatif*), i.e. a system in which not only the parliament but also the head of state comes from a general election. See Cohendet, *Le président*, 3–11.

<sup>29</sup> “Conférence de presse”, 167–88.

tion of 1879. From the point of view of the analyzed relocation, it was crucial to re-define the relationship within the dualist executive power. A clear hierarchy was then outlined between the president and the prime minister, who formally led the government. Ch. de Gaulle pointed out that it is the president who is "the man of the nation, appointed by the latter to be responsible for its destiny" (*l'homme de la nation, mis en place par elle-même pour répondre de son destin*).<sup>30</sup> He said that it is the president who chooses the prime minister and appoints him and other members of the government, and at the same time – which is the most important thing – he can change him (*a la faculté de le changer*) when the prime minister has already completed the task assigned to him by the president, or simply where the executive leader does not support him anymore.<sup>31</sup> As Ch. de Gaulle used to state, it is the president alone who has the task of holding and delegating State authority (*le Président est évidemment seul à détenir et à déléguer l'autorité de l'État*).<sup>32</sup> At the same time, he stressed that "indivisible state power" was entrusted to him by the people through election.<sup>33</sup>

The concept of the government's political responsibility to the president, as expressed by Ch. de Gaulle, has not been rooted in the Constitution. Pursuant to Article 8(2) thereof, the head of state may put an end (*met fin*) to the function of prime minister only upon a resignation which the latter himself submits. Without such resignation, any change in this position is not possible. Thus, the president does not have the power to do this alone. In view of the principles of the parliamentary system preserved in the Constitution of the Fifth Republic, the prime minister and other members of the government remain politically dependent on the parliamentary majority, and it is the change in the political configuration of the National Assembly (after parliamentary election, due to a refusal to grant a vote of confidence, or as a result of a vote of no confidence<sup>34</sup>) that may be a factor determining the replacement of the prime minister. In other cases, it is of course possible to take such a step, but this requires the initiative of the head of government himself. Moreover, Ch. de Gaulle's statements about the government's political responsibility to the head of state were presumably accompanied by a reduction in the parliamentary responsibility of this body. This was so because he emphasized that, according to constitutional regulations, parliamentary delegitimization of the government can only take place in completely extraordinary circumstances. In this situation, the role of the president, who had the right to dissolve the National Assembly, also used to be brought to the fore.<sup>35</sup> Although the use of that right is fully in line with the tenets of a rationalized parliamentary system in which the head of state functions as its stabilizer, the provoking of new parliamentary elections can also be seen as a form of defense of

<sup>30</sup> *Ibid.*, 172.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, 172–3.

<sup>33</sup> *Ibid.* It would be difficult to combine such statements with the principle of separation of powers, which, according to the law of June 3, 1958, setting out the rules for the new Constitution was to become a foundation of the new system. See Popławska, *Instytucja*, 138.

<sup>34</sup> In practice, the presidential election also became a factor generating such a change. Indeed, submitting the resignation of the government by the prime minister to the newly elected head of state has grown into a constitutional custom. Such a practice had already become established after the first general presidential election, which took place in 1965. See Gohin, *Droit*, 727.

<sup>35</sup> "Conférence de presse", 173.

the “presidential” government in the event of an effective (expressed in e.g. a vote of no confidence already made) attack by a parliamentary majority against it. The dissolution of parliament would then simply be a means of protecting the politically homogeneous executive power, and thus the government as much as the president himself (and more specifically his position *vis-à-vis* the government), who could possibly hope to restore a majority in the First Chamber that would support him and thus neutralize the negative consequences of the vote of no confidence.<sup>36</sup>

The adoption of the rule of the government’s dual political responsibility even if not fully regulated by constitutional provisions, was a major change within a system built on the basis of the parliamentary model. Considering the view expressed during the 1964 press conference, this may be seen as a fundamental shift in the formula of presidential power, compared to the previously designed normative model, which had been formalized in the Constitution. However, the concept of the government’s responsibility to the head of state did not originate in a political-systemic vacuum. This kind of relocation of the presidency took place, albeit with varying degrees of intensity, from the very beginning of the Fifth Republic. Although the period of the M. Debré government (until 1962) is sometimes regarded as being largely in line with the rules of the parliamentary system,<sup>37</sup> and the resignation of the then prime minister took place upon the initiative of the president.<sup>38</sup> This kind of dependence was exacerbated once this office was assumed by Georges Pompidou, who did not have such a strong political position within the Gaullist camp as his predecessor. For this reason alone, it can be concluded that the extra-constitutional creation of double responsibility was not so much the result of a single political declaration as a consequence of “smooth” transformations and reinterpretations, and the presidential declaration of 1964 itself was the consolidation of the political process that had already begun.

The formation of this systemic paradigm was also linked to the process of introducing a semi-presidential system in the Fifth Republic. Both these phenomena, while going in the same direction, were not the same. Since one of the determinants of the semi-presidential system of government is the election of the head of state by universal suffrage and the parliamentary political responsibility of the government, the introduction of this system in France only followed the amendment of the Constitution in 1962. Therefore, there was a need for formal change to cause the transition from a parliamentary to a semi-presidential system. In this sense, the “de Gaulle Constitution” itself was a kind of complement to the process of introducing the semi-presidential system in the Fifth Republic. The first step towards this direction was the introduction of general presidential elections, which in itself, according to scholars in the field, constituted this system of government, while the second step was the creation of a new type of rela-

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<sup>36</sup> This was confirmed by the constitutional practice prior to the Ch. de Gaulle press conference in question. After passing a vote of no confidence in the Georges Pompidou government in 1962, the president dissolved the National Assembly. G. Pompidou himself remained prime minister until 1966. Duhamel, Carcassonne, Chevallier, *Histoire*, 76–98.

<sup>37</sup> This was influenced by both the fact that the head of state was not elected by popular vote and the lack of a permanent presidential parliamentary majority. Thus, it was a synthesis of the legal factor and the factual factor. For more detail, see Duverger, *Le système*, 593–600.

<sup>38</sup> Hence, we can speak of the Orleanist parliamentarianism in the Fifth Republic as early as in the period 1958–1962. See Krzemiński, *Premier*, 50–2.

tionship within the executive branch, which was not included in the constitutional law. Their characteristic feature was the supremacy of the head of state over the government and the inherent political responsibility of the government, exercised within the executive branch, which pushed the actual system of government away from the principles of the parliamentary model. At the same time, these constitutional and extra-constitutional changes and adaptations did not go so far as to lead to the adoption of a presidential model based on American patterns, as this was consistently rejected as unsuitable for French realities.<sup>39</sup>

#### 4. Durability and stability of both directions of relocation of presidential power

Given that the specificity of the relocation of presidential power in question in the realities of both the Third and the Fifth Republics is that it took place beyond the text of the constitution, the question of durability of the systemic transformation deprived of a solid constitutional basis is of vital importance. Much depends on the extent to which successors of those who have reinterpreted it will be prepared to uphold it themselves and on how the broader political context will develop at a given time. As regards the Third Republic, the idea, expressed by scholars in the field, of parliament as the political embodiment of the sovereign itself, i.e. a body of exceptional status in the institutional structure of the State, must be regarded as a determinant with a strong influence. Such an assumption did not encourage the adoption of a system of governance in which the executive, including the republican head of state, would be emancipated from the influence of parliament. In the case of the Fifth Republic, on the other hand, such a major factor was the fact that the 1958 Constitution was created with reference to Ch. de Gaulle's political views, and that he himself became, as soon as he took office, its first interpreter. In addition, Ch. de Gaulle enjoyed a strong legitimacy to govern, due to his special merits during World War Two, which was even further confirmed by referendums of a plebiscite nature.<sup>40</sup> All of this meant that the legitimacy of the head of state was actually stronger than it was due to the solutions in force at the time (election by the electoral college).

Thus, if the problem of durability and stability of the "Grévy Constitution" and the "de Gaulle Constitution" is taken as a point of reference, such durability and stability

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<sup>39</sup> A critical approach to the presidential system can be found, among others, in M. Debré's speech before the Council of State delivered on August 27, 1958, ("Discours de M. Michel Debré", 2–3) and in Ch. de Gaulle's statement at a press conference on January 31, 1964 ("Conférence de presse", 170–2). It is true, however, that a number of initiatives for the introduction of the presidential system were taken by parliamentarians themselves but with little chance of implementation. For more detail on this subject, see Dulong, *Moderniser*, 243–53; Bigaut, *Le réformisme*, 74–9.

<sup>40</sup> Such legitimacy could legitimately be attributed to significant charismatic elements. Ch. de Gaulle himself indirectly pointed to this, as evidenced by the justification he gave for introducing the election of the head of state by popular vote. As he recognized, his successors could no longer benefit from such strong social legitimacy derived from past political activity. The issue was addressed by Ch. de Gaulle in a speech to the French people on September 20, 1962, in which he outlined the reasons for initiating an amendment to change electoral procedures. See "Allocution radio diffusée", 24.

could be more or less endangered, and they were so in practice, precisely as a result of their embedding outside the literal wording of the law. While such phenomena can be found in both cases, the differences were fundamental and resulted e.g. from the fact that undermining each of the two paradigms meant something different. A departure from the “Grévy Constitution” would weaken parliament and strengthen the presidency, while an undermining of the “de Gaulle Constitution” would lead to the opposite effect, i.e. a re-valuation of the legislature combined with a reduction in the scope of presidential power. The above assumptions were confirmed by political practice. In the Third Republic, an attempt to challenge the “Grévy Constitution” was made by Alexandre Millerand, who held the presidential office from 1920 through 1924. In a speech delivered in Évreux on October 14, 1923, A. Millerand pointed out the need to strengthen presidential power and to make appropriate constitutional modifications.<sup>41</sup> The postulated changes went towards establishing a balance between authorities by strengthening the arbitration function of the head of state. An intended component of the revised political practice was also the “restored” institution of dissolution of the Chamber of Deputies, seen as a means of reducing the almost permanent governmental instability.<sup>42</sup> However, the balance of political forces, especially the success of the so-called Cartel of the Left (*Cartel des Gauches*) in the 1924 parliamentary election, led to the resignation of A. Millerand.<sup>43</sup>

In the case of the “de Gaulle Constitution”, the question of a fundamental revision of the practical systemic paradigm resulted from the arrangement of political parties that was formed in the presidential (1981) and parliamentary (1986) elections. The presence of a politically divided executive power in the period between 1986 and 1988 (the left-wing President François Mitterrand and the center-right government of Jacques Chirac) meant cohabitation that abandoned the relations between the president and the government as defined by the “de Gaulle Constitution.” Therefore, this was a verification of those components of the actually functioning system of government which did not have a direct constitutional basis. The “de Gaulle Constitution” that assumed political responsibility of the government to the president, which had not hitherto been effectively questioned, could no longer be applied.<sup>44</sup> As the cohabitation lasted a total of nine years, it is difficult to compare it with the unsuccessful attempt to restore a parliamentary system based on a balance between the legislature and the executive branch introduced by A. Millerand in the Third Republic. It is worth noting that in the political system which has been implemented since 1958, no similar attempt (i.e. resulting from the political concept of a specific office holder) has been made to fundamentally and permanently redefine the position of the head of state. In particular, such attempts were not made by the French left, which, despite their criticism of the Gaullist Fifth Republic, began to use

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<sup>41</sup> However, there have already been signs that A. Millerand would seek to re-profile the activities of political institutions through strengthening presidential power. An example of this was the fact that after his election to president in 1920, he expressed the view that “the confusion of powers (*la confusion des pouvoirs*) is the root of all tyranny.” As cited in Mayeur, *La vie*, 263.

<sup>42</sup> Gohin, *Droit*, 481; Morabito, *Histoire*, 356–7.

<sup>43</sup> Mayeur, *La vie*, 271–9; Chagnollaude, *Histoire*, 254–5.

<sup>44</sup> As a result, there was a temporary suspension of the informal rule presuming responsibility of the government to the president in favor of written laws. As Pierre Avril points out, an established practice and material constitution based on specific informal conventions thus had to give way to a strictly formal constitution. See Avril, *Les conventions*, 116–8.



the existing constitutional solutions after taking power in 1981. Not only did President F. Mitterrand use the powers enshrined in the text of the Constitution, but he also relied on the "de Gaulle Constitution" itself, expecting the government and parliament to implement his own political program.<sup>45</sup> The lack of such a redefinition cannot be particularly surprising. In the circumstances of the Fifth Republic, this would have meant that the head of state deliberately sought to diminish presidential power in order to restore its original constitutional framework in the name of a literal reading of the constitutional provisions.<sup>46</sup>

## 5. Final remarks

A comparison of the "Grévy Constitution" and the "de Gaulle Constitution" allows several conclusions to be drawn.

First, attention is drawn to the "openness" of the constitutional provisions, conditioned largely by their laconic nature (especially those relating to the system of powers). In the case of the Third Republic, the system was not yet fully legally regulated (the Constitution omitted, for example, the institution of the prime minister), which meant that its functioning was largely outside the scope of constitutional regulation. The Constitution of the Fifth Republic, although adopted in a completely different political and political context, also did not regulate in detail the structure of the system of powers.

Secondly, if the actual functioning of the systems initiated in 1875 and 1958 were to be taken as a reference, it can be concluded that, although each of them took a different path, the two have gone so far that the actually functioning system of powers, due to the exceptional weakness or exceptional strength of the presidency, went beyond the conventional constitutional framework. As René Remond points out, the directions of evolution, that is to say, the parliamentarist interpretation (*une lecture parlementariste*) and the presidentialist interpretation (*une lecture présidentiariste*) had already been established in the first years of both Republics.<sup>47</sup> Such characteristics can be attributed to

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<sup>45</sup> This was indicated by the content of the presidential address delivered to parliamentarians after the 1981 presidential election.

<sup>46</sup> It is not a coincidence that after the first cohabitation, the problem of revising the position of the head of state began to be analyzed with reference to the alternative that, according to the words of L. Gambetta used in a speech delivered on August 15, 1877, in Lille, was to be faced by President P. Mac Mahon seeking to strengthen his position at the expense of parliament: to surrender or to step down (*se soumettre ou se demettre*). See "Discours prononcé par Gambetta." Under the terms of cohabitation, "surrender" was to mean accepting the reliance of the system on the literal wording of the Constitution, and thus abandoning the attempt to preserve the position resulting from the "de Gaulle Constitution." The presidential response to cohabitation would have been not so much to resign, since that was not legally required, but simply to abide by the Constitution as it appeared in its original text and subsequent amendments. For more detail on this subject, see Popławska, *Instytucja*, 237–45; Gouaud, *La cohabitation*, 7–12.

<sup>47</sup> Remond, "L'avenir", 30–1. However, as Jean-Louis Quermonne writes, both in the early days of the Third and Fifth Republics, there were political crises that could have potentially prevented the formation of both interpretations, at least in the form in which they were eventually adopted. These crises were triggered by P. de Mac Mahon's attempts to consolidate presidential power in 1877 and the manner in which general presidential elections were introduced in 1962 (using a non-standard constitutional amendment procedure).

the established non-application of the provision on dissolving the First Chamber, which resulted in the inability of the head of state, under the provisions of the Constitution of the Third Republic, to stabilize the system in the event of tensions between the parliament and the government (these were particularly frequent at that time). But it was difficult to include within the framework of the Constitution of the Fifth Republic the government's responsibility to the president, which developed in practice. This redefined the relationships within the executive branch, which began to be shaped not directly on the basis but alongside the text of the basic law. In both cases, political practice has therefore contributed to significant changes in the system of powers. In the Third Republic, the construction of dualist parliamentarism was ultimately rejected in favor of the extreme monistic formula, and even to a visible reference to the assembly government system.<sup>48</sup> In the Fifth Republic, such a shift consisted in creating, in practice, double political responsibility of the government, which in fact brought the system of powers closer to a fully formed semi-presidential system.

Thirdly, attempts were made in both cases to place presidential authority within its constitutional framework in connection with the actions of specific political players or the transformations resulting from the existing political configuration. At best, they turned out to be short-term changes, as evidenced by the practice of cohabitation. Moreover, the fact that in 2000 the presidential term was equated with the term of office of the National Assembly (both of which currently amount to five years) proved that the "de Gaulle Constitution" began to be treated by political decision-makers as a construction that had been proven and tested enough to make it preventively strengthened as a measure against the risk of its unexpected undermining by political circumstances. This is how the amendment of 2000 can be read, provided that there has been no complete constitutionalization of the actual structure of links between the president and the government (responsibility of the government to the president has not been included in the Constitution). This reduced the probability of cohabitation. On the other hand, the comprehensive amendment to the Constitution, made in 2008, strengthened the parliament to some extent, but this was mainly at the expense of the government, not the president. Therefore, no real limitation of presidential power took place, which, due to the government's actual and well-established political responsibility to the head of state, is still embedded in the assumptions of the "de Gaulle Constitution." It is worth noting that it was not constitutionalized on this occasion either. It was not decided to include in the

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See Quermonne, *Les régimes*, 44–9. One should agree with the opinion of the cited author when he writes that the depth of rooting of the Constitution is influenced by the crisis of the system in its original version (*une crise de régime initiale*), provided that the crisis has been overcome (Quermonne, *Les régimes*, 44).

<sup>48</sup> On the latter point, a clear position is taken by Olivier Gohin, who concludes that the prohibition of dissolving the Chamber of Deputies, written into the "Grévy Constitution", put an end to the short period during which the Third Republic functioned as a parliamentary system. This point of view was founded on the belief that at least a relative balance between the executive and legislative branches was required in this system. See Gohin, *Droit*, 470–2. This issue is viewed somewhat differently by Philippe Lauvaux and Armel Le Divellec, who note that the crisis of 1877 resulted in a shift in France from dualist parliamentarism to monist parliamentarism, although, at the same time, they point out that the classification of the system of the Third Republic as a system of assembly rule also finds some justification, at least with regard to certain phases of its functioning. See Lauvaux, Le Divellec, *Les grandes démocraties*, 200–1. On the assembly government system in a broader historical and doctrinal context, see Le Pillouer, "La notion de «régime d'assemblée»", 305–33; Božek, "System", 191–211.

Constitution a regulation according to which the president, not the government, "would determine the policy of the nation", although such a modification was considered at that time.<sup>49</sup> The Third Republic also failed to make any changes that would align the codified Constitution with the "Grévy Constitution",<sup>50</sup> although, in this case, the legal regulation of established constitutional practice should be assessed taking into account the system of 1946–1958. The logic of its operation was very similar to that after 1879. This also applies to the dissolution of parliament, which was constitutionalized in such a way that it could not play the role of stabilizing the system of powers. This offers some grounds for seeing in France's first post-war constitution a form of further legal regulation of the "Grévy Constitution." The ease of departing from the constitutional model and the difficulty of returning to the literal interpretation of presidential power were thus tangential points between the Third Republic and the Fifth Republic.

As regards the issue of relocation of presidential power as seen in the perspective of the parliamentary system rationalization process, it should be emphasized that such deformation can occur not only in pre-rationalization parliamentarianism but also when its deep rationalization was at the very heart of the system. Even if in the latter case such relocation has a pro-presidential effect, and thus strengthens and does not weaken the presidency, there is still an internal inconsistency here. Full rationalization, understood as adopting various types of instruments for the smooth operation of the executive branch, including, in particular, its government segment, is accompanied, in the absence of a permanent and anticipated parliamentary majority, by a rather ambivalent approach to the legal regulation of the system of powers. In the practice of the Fifth Republic, in particular during its initial period, this prompted the political actors to put the ideas of the new system above the wording of the Constitution itself. The best evidence of this phenomenon was the creation of an informal, yet firmly established in the practice of ruling, responsibility of the government to the head of state. However, the point of this inconsistency is not about neutralizing the effects of specific constitutional mechanisms to make the executive branch's operation more effective but the difficulties to establish a strictly constitutional model of the presidency in practice. This did not prevent the strengthening of the executive branch in the broad sense. The relocated presidential power was to a certain extent above the government, not next to it, so it was the head of state as the actual leader of the politically homogeneous executive branch (except for cohabitation) that became the main beneficiary of rationalization. This has made it possible to implement not a government political program but a presidential program. The internal inconsistency of the rationalization taken as a whole (legal regulation to prevent relocation and specific mechanisms for streamlining the operation of the executive branch) did not undermine this process but distributed the accents differently with regard to the president and the government.

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<sup>49</sup> Hourdin, "Pouvoir", 203–8.

<sup>50</sup> However, in the 1930s, there were already clearly visible trends, at least among scholars of constitutional law, for deeper systemic reform, which would eliminate the most serious shortcomings of the Third Republic. This was a broader background to the changes that were eventually finalized by the adoption of the 1958 Constitution. See Rouvillois, *Les origines*, 186–92.

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