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Author(s): R. H. Soltau

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The Present Position of the President of the French Republic.

By R. H. SOLTAU,

Assistant Lecturer at the University of Leeds.

CONSTITUTIONAL reform is being widely discussed in France at the present moment, and there is scarcely a feature of the Constitution of 1875 which is not coming in for considerable criticism. It is felt on all hands that the present machinery is ill-suited to the needs of the hour, and that a thorough overhauling is essential to the satisfactory reconstruction which the country needs.¹ Even before the war had laid bare the weaknesses of the system, the position of the President of the Republic had for some time been the topic of much discussion.² The apparent ineffectiveness of the President, the way in which statesmen of the first rank were constantly passed over for minor figures of the political world, and the general lack of prestige with which the position was regarded made many people feel that something had gone wrong with the institution, and that its creators would scarcely recognize their work in the figure-head whom the French call "le chef de l'Etat."

The election of M. Millerand in October last may be said to have brought the matter to a head. It will be remembered that he only accepted the position on condition that his election would not entail his practical withdrawal from active political life, but that he would be allowed to exercise an effective control over national affairs; and in a speech he made at Lyons in March, 1921, he reminded the country of the light in which he regards his office: "Although the Constitution (he said) frees the President from the direct and personal responsibility to Parliament which is laid on the other members of the Government, neither its letter nor its spirit condemn him to be a purely passive person, cloistered in an ornamental isolation. This interpretation of the presidential functions, on which I had been careful to lay stress before I had the honour to be elected nearly six months ago, I have endeavoured to put into execution, without calling forth, to my knowledge, any serious criticism. While working in trustful and constant co-operation with the members of the Cabinet, the President does not merely discuss daily with them important and delicate matters. He is careful to keep in touch with the qualified representatives of public opinion, the first of whom

¹ Cf. Villey, *Les vices de la Constitution française*, 1918; Probus, *L'organisation de la démocratie*, 1918; Justin, *La responsabilité du Parlement*, 1918; Barthélémy, *Le gouvernement de la France*, 1919; Dell, *My Second Country, France*, 1920.

² Cf. Leyret, *Le Président de la République*, 1913.

are the members of Parliament." Exactly how much direct control these discreet phrases indicate, it is, of course, impossible to say; all that we wish to point out is this revolt against the "ornamental" theory of the Presidency.

In itself, this attitude is no new thing. As far back as 1893, M. Casimir-Périer resigned on the grounds that "the President was devoid of any effective means of direction or control," and in 1899, M. Deschanel, who was chosen in 1919 as being essentially a "safe" man, declared that "the instrument in use was a very imperfect one, and that it was necessary either to change it or to enable the Presidents to use the extensive powers with which they were theoretically armed." Finally, in 1913, M. Poincaré's election was taken as an indication that some change was impending, as it was not considered likely that an active Prime Minister would exchange a position of direct responsibility for one of purely nominal control. But the Parliament of 1893 preferred to accept M. Casimir-Périer's resignation rather than extend his powers, and M. Deschanel was not elected in 1899, but only twenty years later. What M. Poincaré might have done had not the war broken out is entirely a matter of conjecture, but it is to be noted that he was unable or unwilling to keep out of the office of Finance Minister in December, 1913, the last man he would have chosen for the post, M. Caillaux.

The fact is, however, that a figure-head President does not correspond to the historical traditions of French republicanism. When in 1848 it became necessary to build up a republican constitution for France there were two rival conceptions of the office. The first, embodied in what is known as the Grévy amendment, was that of the France of 1792: the sovereign authority was not to be delegated to any individual but was to be exercised by the Cabinet under the direct control of the Legislature. In this way there would be no danger of the Presidency being used as an avenue to a Dictatorship, but on the other hand there would be no outward head to represent France before the world. The conception which prevailed, however, was that borrowed from America, of a President elected by the whole people for a specified number of years, who would be the effective and responsible head of the whole executive. Events showed that Grévy's fears were justified, although it would scarcely be fair to say that the *coup d'état* of 1851 was the inevitable outcome of the system; and when in 1871 France was for the third time called upon to give herself a Republican constitution the problem was a singularly complex one. The Republicans were not in a majority in the assembly, and the restoration of the monarchy was confidently expected as soon as the two branches of the royal family, Bourbon and Orleans, had composed their quarrel and agreed upon a single pretender to the French throne. The Republicans were very chary of repeating the ill-fated experiment of 1848, but the Grévy system had no chance of being accepted by an assembly of monarchical sympathies, to whom the Third Republic was only to be a transition

from Empire to Monarchy. Republicans and Royalists alike easily agreed therefore to take the position of the British Crown as a model ; the Royalists argued that the closer the Republic approximated in its external structure to a constitutional monarchy, the easier a royalist restoration would prove, while the Republicans, not quite knowing which way to turn, were really prepared to accept any system not incompatible with the republican principles, trusting to time to turn into a permanency what many thought to be a temporary expedient.

The theoretical powers conferred by the Constitution of 1875 on the President of the Republic were therefore on the whole very similar to those of our own sovereign ; but the President being elected by the representatives of the people it was felt safe to entrust him with certain functions not expressly given to the British Crown, as, for instance, the right to attend Cabinet meetings, to issue public messages, to have the initiative of laws, to sign foreign treaties with the sole consent of one minister (with certain reservations), to send a bill back to Parliament for further discussion, and to request Parliament to consider the revision of the Constitution. How far those powers were really made ineffective by the necessity for the countersignature of some minister to every decree of the President will be seen later ; what is important is to note that just as the powers of our Sovereign had never been clearly defined, so those of the French President were, in some important particulars, left distinctly vague. For instance, the Constitution does not say whether a President can demand the resignation of a minister, and gives him a much freer hand in the selection of the Cabinet than he has, as a matter of fact, been able to enjoy. The very necessity for a ministerial countersignature is not at all clear : does the countersigning minister endorse full responsibility for the policy embodied in a particular decree, or only for its legality ? Is not the countersignature a purely negative check to prevent unconstitutional measures ? On these important points the Constitution is silent, and it is quite clear that the Presidency was likely to become very much what the first few Presidents made it, the Constitution itself being after all but words to which a great variety of tunes could be set.

The first President, Marshal McMahon, certainly had a policy of his own, and he even seemed to think that his position allowed him to keep in office a ministry which had not got the confidence of the Chamber ; but the general election of 1877 (the only one taking place as a result of a dissolution of Parliament) showed him to have been mistaken, and though he did not resign till 1879, he was henceforward politically helpless. The election of Grévy in January, 1879, really marks the starting point of the presidential system as we know it. The real head of the Republican party was then Gambetta, and had he been chosen there is really little doubt that he would have made the President the effective head of the State by the free use of the powers which the law granted him. But for

a variety of reasons he was not chosen ; strictly speaking, indeed, he refused to let his name go forward, acting, it is said, on the scarcely disinterested advice of Grévy himself ; but we can also discern the beginning of the Republican distrust to elevating a really strong man to a post which is largely outside the immediate control of Parliament.

Grévy then began the tradition of the figure-head president. He repeatedly maintained that, as long as he was in power, there would be no *politique de l'Elysée* in opposition to that of the Cabinet ; and, indeed, it would scarcely have been possible for a man who, in 1848, for fear of a dictatorship, had proposed that there should be no President at all to use his position in any personal way. When he resigned in 1887 at the beginning of his second term of office, the Boulanger crisis was at its height and " Cæsarism " the *bête noire* of the day. As a result the three really strong men—Ferry, Floquet and Freycinet—all failed to be elected, none being prepared to make way for the others, and at M. Clémenceau's suggestion an outsider¹ was chosen in the person of M. Sadi Carnot, whom no one could accuse of personal ambition or, indeed, of much personality.

Carnot continued the Grévy tradition, as he was expected to do. His successor, M. Casimir-Périer, refused to do so and had to resign ; and M. Félix Faure, chosen for the same reasons as Carnot, was only able to add a little to the outward pomp of the office, nothing to its real effectiveness. It may, indeed be said that all the real leaders of Republican France, Waldeck-Rousseau, Brisson, Méline, Clémenceau, have all at various times been deliberately put aside to make way for men whose names were scarcely known to the man in the street the day before the election. By the end of the century the Presidency had definitely taken its permanent aspect, namely, that of a post going to a man whom the party leaders consider to be " safe " ; its holder retires from party politics, and is, indeed, usually chosen for his ability to conciliate people of different tendencies ; it is for this reason that the presidents of the Senate and Chamber of Deputies are always supposed to have a specially strong claim. The complete disappearance of M. Loubet and M. Fallières from public life at the expiration of their term of office, and their refusal to seek re-election, is the best indication of what we may call the orthodox presidential tradition.

In spite of its very evident drawbacks, the system cannot be said to have worked badly on the whole. Why then this revolt which M. Poincaré's election is said to have heralded ?

The discrepancy between the theoretical and the actual powers of the President is undoubtedly one of the factors. What is the use, says the logical French mind, of giving considerable powers with one hand and withdrawing them with the other ? The need for

¹ This was Clémenceau's own expression. Cf. Bodley's *France*, p. 205 (French edition), quoting Clémenceau's *Les Couloirs du Boulangisme*.

the ministerial countersignature has meant, in practice, that the minister, considering himself to be responsible, naturally insists on his own policy being adopted, and the so-called presidential decrees are no more presidential decisions than the King's Speech is really written by the King. In addition to this criticism, it is certain that the fundamental objection to the extension of presidential powers has largely disappeared now that the Republic has lasted longer than any system since 1789, and is no more at the mercy of the *coup d'état* of a Louis-Napoléon or a Boulanger. Besides, the position of France at the present time makes the need for effective leadership very great. In spite of many grumbings the French liked the strong hand of M. Clémenceau during the war. Years ago, that acute observer of French politics, Mr. Bodley, declared that France "had a perpetual need of a master to whom to give herself, of a hero to worship"; and he foretold that "France would need, in order to be guided at the beginning of the twentieth century, a hand as strong as that of the First Consul who controlled her at the beginning of the nineteenth!"¹

There is therefore every indication that some change is imminent in the position of the President, and the question is: on what lines?

Americanize the Constitution, say some. Make the President the responsible head of the executive; place the Cabinet directly under his control and remove ministers from Parliament so as to deprive the deputies of the temptation to overthrow a ministry for the sake of spoils, and take away from Parliament the election of the President and restore it to the whole people as in 1848: the objections to that course of action no longer exist.

It is, of course, quite possible that one or more of these suggestions will be adopted independently of the others. It seems fairly certain that no real extension of presidential powers is possible without giving public opinion a much larger share in the choice of a President. On the other hand the direct election of the President has not given America men of a much higher calibre than the majority of French Presidents, and the removal of ministers from Parliament is a measure fraught with very considerable risks, and certainly diminishes the effectiveness of Parliamentary control. But it may pertinently be asked whether extension of powers is really necessary. There are many people who consider that what is needed is not so much a change as a clear definition of what the President may and may not do, the identifying of his legal with his actual powers. Few, indeed, if any, would obtain this identification by the removal from the President of such functions as are now actually exercised by the Cabinet; this would be, of course, the logical consequence of the figure-head theory, but it would inevitably mean that no one would dream of accepting the Presidency as long as he felt equal to any kind of political activity. It would enormously strengthen

¹ Bodley's *France*, p. 227 (French edition).

the position of the Prime Minister, and would almost be equivalent to a return to the Grévy proposal of 1848. It can scarcely be said to be a practical issue.

Many feel, however, that all that is needed is a measure enabling the President to use the powers which the law gives him. These powers, they declare, are as great as it is safe for one man to exercise. Even with things as they are, a resolute man can do a great deal; and they point to the fact that M. Loubet was able to keep M. Clémenceau out of any office during all the seven years of his presidency; that the President can exercise a very effective control over foreign affairs owing to his treaty-making capacity, and that M. Faure was able to prevent for a long while any re-opening of the Dreyfus case. The Constitution, they say, gives the President a free hand in the choice of his ministers as long as they can command a majority in Parliament; there is nothing to prevent him from initiating policy and winning over the Cabinet to his point of view, instead of his accepting more or less ready-made the decisions of his ministers. A very slight re-adjustment would be enough to make his position perfectly clear and logical; in fact, all that is necessary is to make the ministerial countersignature the mere matter of constitutional form which it was certainly intended to be. All this would probably weaken the position of the Prime Minister, it is true, but it might lead to greater Cabinet stability and to more continuity in policy. The manner of the presidential election might have to be revised and some broadening of the electoral college is probably necessary, without going to the length of direct popular election; and it is also possible that some device for removing an unpopular President, similar to that given in the new German Constitution, would obviate certain difficulties.

While, then, the time has come for a clearer statement of the presidential powers, perhaps together with a slight broadening of these, it should be said that the enormous control which the executive exercises in France over the whole life of the nation makes it very undesirable to entrust very considerable powers into the hands of one man, on the American or any other model. No increasing of the President's powers would be really safe without a vast measure of decentralization which, by restoring local freedom, would make less serious the creation of a more personal executive.¹ The real problem for France is not so much that of the precise form of the executive, or even of the relations between executive and legislative, as that of the control of the executive over the individual by means of the highly centralized machinery over which Parliament has little, if any, control. Until the Frenchman is free to administer his own local affairs—we should say, until the *préfet* is abolished or at any rate removed from his present pedestal—there can be little true

¹ In his speech of March 15th, already quoted, M. Millerand suggests that the Departmental *Conseils généraux*, which have already done good service, might well be given more powers for local affairs.

liberty in France, whatever be the precise functions of the President of the Republic.

APPENDIX.

*Presidential powers according to the Constitution of 1875:*¹

1. He can be re-elected.
2. He has the initiative of laws, concurrently with both houses of Parliament ; he promulgates laws, and sees to their execution.
3. He has the right of pardon.
4. The armed forces are at his disposal.
5. He appoints to all offices, civil and military.
6. He presides over national ceremonies.
7. On the advice of the Senate, he can dissolve the Chamber of Deputies.
8. He can ask Parliament to revise constitutional laws.
9. He can call Parliament for an extraordinary session.
10. He can adjourn Parliament for one month twice in the same session.
11. He can communicate with Parliament by means of messages.
12. Within certain limits of time he can ask Parliament to reconsider any law, and Parliament cannot refuse.
13. He can negotiate and ratify treaties, which are communicated to Parliament as soon as the safety and interest of the State allows.
14. Every act of the President must be countersigned by a minister.
15. The President is not responsible, except in case of high treason.
16. The President cannot declare war without the consent of Parliament.

¹ This appendix is taken from Leyret, op. cit.