

'L'Etat C'est Moi'¹, Maintenant C'est Quoi?

The Powers of the Parliament of the Fifth Republic : Theory and Practice.²

by

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Introduction

'Il a été un temps qu'on ne donnait en ce royaume aucun ordre par précaution ... ce qui a causé beaucoup de maux ...' ('There was a time in this kingdom when nobody gave orders as a precaution...and this gave rise to many evils')³ The 1958 Constitution, however, relegated the Parliament to the pit of the constitutional order, below an empowered President and an independent Government. The supremacy of parliament combined with the fragmented party system devised by the 4th Republic had rendered it inactive, ineffective and ultimately inoperable. This was manifested by the distressing frequency with which Governments were overthrown.⁴ Parties colonized ministries, utilising office to obstruct 'the implementation of policies by rival groups'⁵ as frequently as promoting their own. As De Gaulle had predicted in 1946, administrations comprising of ad hoc coalitions based on transient compromises and delicate negotiations would simply repeat the mistakes of the past. The idiosyncrasies of the French political reality, he believed, justified such a divergence from other contemporary European political systems.⁶ His theories of an

¹ 13 April 1655, Louis XIV (1638-1715) trenchantly imposed his authority over a Parliament suspicious of the legality of many of his laws which aimed to increase the monetary contribution to the war with Spain.

² This essay attempts to conform to the specific structural requirements of '*une dissertation juridique*' a French legal essay which includes a general introduction and two further parts which should be subdivided into additional units. There is generally no conclusion.

³ Cardinal Richelieu, 1585 – 1642, Arnaud Teyssier p. 535

⁴ 21 times from 1946 - 1958

⁵ Francois Petry, 'The role of cabinet ministers in the French Fourth Republic', Laver and Shepsle p. 136

⁶ De Gaulle argued during his discourse at Bayeux 16/06/1946 that 'executive power should not emanate from parliament...or the result will be a confusion of powers which will reduce government to a mere conglomeration of delegations...' Knapp and Wright p 135

empowered executive, however, were trenchantly rejected with predictable republican zeal after the Vichy lacuna of totalitarianism.

The *Assemblée Nationale* voted the General into office in June 1958, on the precipice of a civil war with the authority to draft a constitution and then submit to it to the people in a referendum. The rebellious colonial army in Algeria had refused to countenance any withdrawal and many units had occupied Corsica, engendering the credible belief in metropolitan France that an invasion was imminent. In drafting the 1958 Constitution, De Gaulle sought to remedy the institutional defects that he believed had precipitated the shameful Government inaction and the consequent colonial crisis in Algeria. Echoing the aims of Leon Gambetta who had espoused at the birth of the 3rd Republic ‘*un gouvernement d’ordre ... un gouvernement stable et progressif*’⁷ (a government of order...a stable and progressive government’), he was resolved that France would never again suffer the humiliation of *immobilisme*(inertia/inaction) in the face of impending invasion as it had in 1940.

The constitutional text therefore supports the political objective of establishing a strong government, indispensable to the exigencies of the time. The principal institutional alteration was perhaps the rejection of Rousseau’s mystical ‘*mythe de la volonté générale*’(‘myth of the general will’) and of the supreme sovereign powers of Parliament which had dated from the Revolution and which had been firmly constitutionally entrenched since the 3rd Republic. Despite the reassuring rhetoric of a parliamentary system, its powers were radically diminished. The Government was no longer subjected to the claws of a fickle parliament, now obtaining its legitimacy from the President.⁸ In addition, it was legitimately permitted to invade the traditional parliamentary domain of legislation.⁹ Article 34 specifically established a limited residual role for parliament, rendering la loi ‘*détrônée ... dépouillée de son omnipotence antérieure*’¹⁰(‘Ousted...stripped of its former omnipotence’). To rigidly enforce this novel demarcation, the *Conseil Constitutionnel* was established. Promulgated in October 1958, the document enabled ‘*le grand homme grand*’(‘The Big Fellow-De Gaulle) to adroitly resolve the Algerian crisis and simultaneously to validate the new order of constitutional power.

⁷ Teyssier p. 11

⁸ Article 8

⁹ Article 37

¹⁰Teyssier p. 46

45 years later, the diluted powers of parliament are still vehemently debated and discussed. The recent use of the ‘*arme atomique*’, Article 49-3¹¹ generated vociferous media and parliamentary denunciation. Such executive domination is perhaps now unacceptable in the fundamental republicanism of the ‘*l’esprit du mai*¹²’ (‘*spirit of May*’) era, enhancing further in practice, parliamentary power. Its non-use however appears to rest purely on the convention of *cohabitation*¹³. Thus the quinquennat (five year mandate), the Constitutional amendment of 2000, effecting a synchronisation of the election dates and terms of parliament and the President will theoretically delimit the potential impact of parliament in political affairs.¹⁴

The modern universal constitutional challenge is inherently that of maintaining ‘a fine balance...between efficiency and democracy.’¹⁵ As Kipling noted however, the past remains a pertinent feature of the French psyche ; ‘*Ces prétendus comédiens avaient derrière eux un passé de drames et de désastres, dont le poids se fait sentir encore dans tous les aspects de leur existence* (these would be actors still feel the effect of a dramatic and disastrous past on all aspects of their lives’).¹⁶ Does the modern ‘*fait majoritaire*’ (‘majority rule’) therefore, render draconian the constitutionally entrenched and omnipotent executive powers, conceived in a past era of fragmented political instability? Or has the practical application of the French constitutional theory sufficiently realigned a textually marginalized institution?

In Part I, the deficiencies of parliamentary powers in theory and in practice will be discussed. Part II will espouse the view that despite such defects, the Parliament has not become merely ‘*une chambre d’enregistrement*’ (a registration room)¹⁷ and it exercises significant powers both in theory and in practice.

¹¹ ‘*Le premier ministre peut, après délibération du Conseil des ministres, engager la responsabilité du Gouvernement devant l’Assemblée nationale sur le vote d’un texte. Dans ce cas, ce texte est considéré comme adopté, sauf ...une motion de censure*’ (the Prime-Minister can, after deliberation with the council of ministers, engage the responsibility of the government before the National Assembly on the vote of a text. In this case, the text is deemed passed, except...a confidence vote’).

¹² Le Monde 12/03/2003– referring to the collective political and public disgust with the success of the far right leader of le Front National, Le Pen at the first round of the Presidential elections.

¹³ This occurs when opposing political factions simultaneously share the power of government i.e. when a left-wing President must accommodate a right-wing parliament or vice versa.

¹⁴ The theory, as adumbrated by Time Magazine, April 2002 is principally that of the rational political animal. ‘Voters would not be so perverse as to elect a new President and one month later hand a parliamentary majority to his opponents.’

¹⁵ Financial Times 29/11/2003, ‘Cobbling Together a Constitution’. This was expressed in the context of a European Constitution.

¹⁶ Rudyard Kipling (*Souvenirs de France*) appears as an epigraph in Tessyard.

¹⁷ Le Monde 12/02/03

I The Deficiencies in French Parliamentary Powers

In theory (A), the traditional parliamentary powers of legislating and of supervising the government are restricted. Political and subsequent legislative developments and the jurisprudence of the *Conseil Constitutionnel* (B), illustrate the practical constraints on parliamentary power.

A) Theory

(1) The government is ascribed **direct powers** to '*sortir de l'impasse*' ('to break the deadlock'), to constrict and to override a potentially opposing parliament. The executive is aided by the constitutional corset of an empowered *Conseil Constitutionnel*, liberated from the ideological constraints of parliamentary deference demonstrated by its ineffective 4th Republic ancestor.¹⁸ This institution was originally perceived as a significant theoretical erosion of the historically infallible *loi* (legislation), which was originally subject only to the internal procedural limitations of a parliament.¹⁹

The pledge of Article 49-1 timidly espouses the theory of governmental responsibility to parliament, yet it is significantly weaker than its corresponding 3rd and 4th Republic provisions. There exists however, no unambiguous requirement that the government is obliged to seek parliamentary approval in order to secure legitimacy in the pursual of its policies.

49-2 trenchantly discourages a motion of censure, necessitating 10% of deputies to support it and an absolute majority of votes cast, for it to succeed. Moreover, a deputy may only sign a maximum of three such motions in any parliamentary session.

Article 49-3 is the '*couperet*' ('chopper/guillotine') of government, '*la forme la plus raffinee et la plus brutale de la rationalisation du parlementarisme*'²⁰ ('the most refined and brutal form of rationalisation of parliamentarianism'), designed to ensure ultimate parliamentary submission. It permits the abandonment of debate,

¹⁸ This Constitutional Committee only once exercised its legislative suspension power.

¹⁹ The traditional French republican mistrust of the judiciary was originally expressed in a *loi* of 16-24 August 1790 when the judiciary were prohibited from refusing to enforce *loi*. This anxiety however continues to be manifested in the semantics of the constitutional provisions in refraining from depicting the *Conseil Constitutionnel* as a power. In practice its decisions are followed by the ordinary private and public law courts.

compelling the deputies to vote for an entire bill (or submissively to not vote at all!) or to reject it whole, precipitating the fall of the government.

‘*L’ordre des choses est inversé au profit de l’exécutif*²¹’ (‘the order of things is reversed to the benefit of the executive’). Article 40 restricts parliamentary legislative powers equally, in significant areas of public policy by rendering *irrecevable(inadmissible)* any intrusions in the raising and expenditure of public funds. Similarly, Article 41 enforces this new unlimited regulatory sphere of Article 37, providing for executive recourse to the *Conseil Constitutionnel* in the event of a dispute. Article 37 also permits the alteration of previously enacted *lois* (pre – 1958) without recourse to parliament or the reclassification of these *lois* to the executive domain as *regulations*.

Collectively the battery of invasive government powers echoes De Gaulle’s aim as historically expressed in *Bayeux* of eliminating ‘continued politically effervescent parliaments...an Assembly not always clear-sighted and untroubled.’²²

(2) The significant theoretical deficiencies are equally manifested by the many **indirect** restrictions.

Article 48 permits the government to control the parliamentary agenda, significantly diminishing the possibility of a *proposition de loi* (emanating from parliament) being successfully enacted. Secondly, the enactment of a finance act by *ordonnance* (according to translation of the Constitution-Article 47) is permitted if the parliament fails to accept or reject the *projet de loi* (Government Bill) within 50 days. Thirdly, Article 45 permits the government to dispense with the customary reading of bills, the complex procedure of *la navette*(*where legislation shuttles between the National Assembly and the senate until agreement is reached*), through their submission to parliamentary committees. If necessary a single vote of the *Assemblée Nationale* may simply be required for enactment.

International and E.U. law similarly circumscribe, in theory, parliamentary powers. Article 55 and *Titre XV* espouse a monist system and consequently an inferior status of *lois*.

²⁰ Ardant p. 556

²¹ Teyssier p.45

²² Stevens p. 36

Finally, in light of past abuses, the traditional parliamentary competence to control elections and to legitimate Standing Orders is vested in the *Conseil Constitutionnel*.

(B) Practice

A strict textual analysis suggests overwhelmingly invidious restrictions which have contributed to the weakening in practice, of the traditionally coveted parliamentary roles of (i) supervising the government (ii) legislating. '*La Constitution à elle seule ne suffit pas à définir le caractère d'un régime politique*(the Constitution alone cannot define the character of a political regime).'²³

(1) (i) *La pauperisation politique de l'Assemblée Nationale s'explique surtout par le fait majoritaire*(*'The political impoverishment of the National Assembly is due in particular to the fait majoritaire'*).²⁴ The unforeseen political reality of a homogeneous and stable party system therefore diminished further the potential of the above mentioned 49-1 and 49-2 as substantive parliamentary powers. The latter has been utilised only once since 1958²⁵ and evolved in practice to be considered by some administrations as a mere empty formality. While 49-1 has been frequently invoked, it has never been successful in practice. Similarly, the initial utilisation of Article 49-3 was predictably extensive. M. Rocard resorted to this '*filet de sauvetage*' ('*safety net*') as prime minister 13 times from 2/10/1990 to 31/12/1990.

The practical restrictions on written parliamentary questions render ineffective the pursuit of the traditional parliamentary task of holding ministers accountable since such questions are usually answered by civil service members of the ministerial *cabinets* in lieu of the individual minister. 22% of written questions posed by deputies had received no reply when the parliament was most recently dissolved in 2002.²⁶

The severe deficiency in financial and technical resources combined with the *cumul des mandats*(Plurality), are also powerful prohibiting factors. The latter, actively encouraged by the executive, has engendered widespread absenteeism

²³ Laudet and Cox p.29

²⁴ Francois Hollande, 'Misere du parlementarisme', Laudet and Cox, p.24

²⁵ To depose of the first Pompidou government in 1962

²⁶ Stevens p. 184

amongst deputies who often also occupy the office of mayor in their respective localities.²⁷

Similarly a rotten complacency within parliament has precipitated a gross lack of ‘political standing.’ Deputies have shamefully permitted the enactment of provisions shielding those who have breached political finance laws. Stevens criticises the reluctance of parliamentarians to assert their role of government supervision in depending on the judiciary and the media to unfurl various tales of corruption.²⁸

(ii) Overall, the theoretical legislative *rationalisation* of parliament has been effective. 90% of *lois* are *projets de lois*, thus deriving from the executive *Conseil des Ministres* and 80% of economic laws now emanate from the E.U.. Article 38’s ‘*loi d’habilitation*’ (*‘habilitating law’ which enables government interference with executive function*) theoretically permits the delegation of legislation in the parliamentary domain to the government for a limited time and subject area. This legitimate invasion has been regularly exercised, particularly to implement certain E.U. directives.

In general critics castigate the ‘cavalier treatment of parliament’²⁹ by the executive since it further accentuates the inferiority of the directly elected representative institution. The incessant delays in the implementation of *loi* by the executive manifest this attempted negation of parliamentary power. Knapp and Wright note a scandalously lengthy delay of 7 years with regard to the legalisation of contraception.³⁰

The practical impotence of parliament as regards its theoretically meagre influence in the determination of the budget is cogently illustrated by the startling image of parliament presented by *l’Association pour le Controle de la Depense* (*‘the association for control of expenditure’*) as a blindfolded *Marianne* (Female figure symbolising France), which appeared in an advertisement in *Le Monde* recently: ‘*Le parlement est obligé de voter les Dépenses publiques les yeux fermés. Vous trouvez ça normal?*’ (*‘The parliament is obliged to vote on public expenditure with their eyes*

²⁷ Stevens highlights the marginal reform of 2000 which abolished the simultaneous juggling of two posts in certain circumstances, slightly restricting this practice. It rendered incompatible for example the position of Member of the European Parliament with that of Member of the French Parliament.

²⁸ *ibid.* p.188

²⁹ Knapp and Wright p.142

³⁰ *ibid.* p. 143

closed. Do you find this normal ?')³¹ Ardant also emphasises this startling deficiency in parliamentary powers: *'l'affaiblissement du rôle budgétaire du parlement doit être souligné car il rompt avec une tradition bien établie d' un régime parlementaire'*³² ('the weakening of the Parliament's budgetary role ought to be outlined because it breaks with a well established tradition of parliamentary regime'). Such inefficiency is statistically evident in the unsuccessful parliamentary budget debates of 2000. A meagre 7.6 billion francs out of a total of 1,500 billion francs was successfully diverted.³³

Equally, the constitutional innovation of the direct election of the president initiated by De Gaulle in 1962 served to accentuate the theoretical deprivation of parliament of its historically entrenched political centrality. *'(Il faisait) sauter le dernier verrou qui protégeait la souveraineté parlementaire.'* ('It removed the last protection for Parliamentary sovereignty')³⁴ There is now a prevailing sentiment that *'l'essentiel est fait ailleurs, dans les bureaux des cabinets ministériels* (the most important business is done elsewhere, in the offices of the cabinet ministers').³⁵ It is the media and not the Houses of Parliament which provide the public forum within which the policies of government are announced. Therefore, where a government has withdrawn a bill it is generally in response to intense public pressure as opposed to any parliamentary influence.³⁶ The spectacular rise of the Front National in May 2002, culminating in the generally abhorred success at the first round of the 2002 Presidential elections is a potent manifestation of this point. As Stevens notes the party never had a significant presence or influence in parliament.³⁷

(2) *' Les excès du parlement sont bridés par un nouvel organe constitutionnel...'* ('the excesses of parliament are hindered by this new constitutional body')³⁸. This was clearly evident when the *Conseil Constitutionnel* declared itself incompetent regarding the legitimacy of the duration of the Article 16 state of emergency. Moreover it also refused to annul the 1962 referendum, initiated by De

³¹ Le Monde 3/12/2003

³² Ardant p.546

³³ Knapp and Wright p. 144

³⁴ Teyssier p.41

³⁵ Francois Hollande, 'Misere du parlementarisme', Laudet and Cox p. 25

³⁶ Stevens p.180

³⁷ *ibid.* p.187

³⁸ Teyssier p.47

Gaule, which was clearly unconstitutional, in conveniently ignoring Article 11.³⁹ These decisions severely diluted the validity of parliament as an State organ.

In 1971 the judicial discovery of the '*bloc de constitutionnalité*' ('collection of constitutional rules')⁴⁰ serves to limit the power of *loi* to the confines of many unenumerated fundamental principles '*à valeur constitutionnelle*' ('a worthwhile constitution'). These have proved in practice difficult to usurp. Now '... a voted *loi* ... only expresses the general will in respect of the constitution ...'⁴¹

On the 15th January 1975, the *Conseil Constitutionnel* also breathed life into Article 55, ruling that if international law is considered incompatible with national *loi*, ordinary courts should enforce the former. The *Conseil d'État* (Highest administrative court) however stubbornly resisted recognition of the supremacy of international law until the seminal case of *Nicolo* in 1989.⁴²

Finally, the *Conseil Constitutionnel* stated that it was incompetent to annul a government trespass in the parliamentary domain (Article 34)⁴³, rendering it incapable of defending its legislative power other than by persuasive convention. Since then the government has sought frequently to invade Article 34 by enacting regulatory matters in statute form, cloaking it in the irreversibile immunity of promulgated *loi*. Thus in practice '*la frontière entre les règles et les principes est tellement floue.*' ('the border between rules and principles is really vague')⁴⁴

II The Powers of the French Parliament

'Le Parlement sort en effet moins affaibli ... que ne laisserait penser la simple lecture des dispositions constitutionnelles ...' ('The Parliament emerges in fact stronger from this than a simple reading of the constitutional provisions would

³⁹ Decision No. 62-20 DC of 6th November 1962, Rec. p. 27. Subsequently confirmed unconstitutional by the Vedel Committee (1996)

Article 11 requires the government to make a statement before each House, followed by a debate of the proposed change. The president may only legitimately submit a bill to referendum, the subject of which deals with '*l'organisation des pouvoirs publics...des reformes relatives a la politique economique ou celle de la Nation...services publics qui y concourent, ou...(le) ratification d'un traite qui, sans etre contraire a la Constitution, aurait des incidents sure le fonctionnement des institutions.*'

⁴⁰ Decision of 16 July 1971

⁴¹ 23rd August 1985

⁴² [1989] Rec. Lebon 190

⁴³ Decision of 30th July 1982

⁴⁴ Ardant p.531

suggest')⁴⁵ The constitutional text, in theory, retains the rudimentary powers of a parliamentary democracy. The ingrained French republican tradition of a representative body empowered to express the elusive '*volonte générale*' ('general will'), which dates from the inaugural meeting of the Estates General in 1789, has ameliorated these provisions further in practice. Thus the modern French parliament appears more assertive and vigorous⁴⁶ than initially textually defined.

Apart from Article 49 the *Sénat* and the *Assemblée Nationale* generally dispose of equal powers. The lower House consists of 577 directly elected members. The members of the *Sénat*, in contrast represent elected local authorities. They are elected by an electoral college comprising of mayors, town councillors, deputies and members of the councils of all *departments* (95 main administrative divisions of France).

(A) Theory

The guarantee of immunity, delineated in Article 26⁴⁷ and the 9 months of parliamentary session are **theoretically** effective in ensuring that the fundamental parliamentary powers and functions can be maximised.

(1) The submission of written and oral questions (Article 48) enables the parliament to **supervise the government** activity. Knapp and Wright note the progressive development of more spontaneous, less controlled and better publicised questions.⁴⁸ This power is accentuated by the establishment of hearings, temporary information assignments and committees of enquiry probing further into government conduct.

The vote and debate on the budget appear also to be theoretically effective controls. Various committees produce reports or opinions on the *projets de loi*, which are then distributed in the *Assemblée Nationale*, the recommendations of which may influence strongly the subsequent approval or rejection of the measure.

(2) Concerning legislation, the numerated parliamentary powers of Article 34 jealously guard important issues in the determination of residual detailed *règles* (rules) eg. civil rights, succession and crime. The executive is only permitted to intervene in this area in delineating the overall general principles. In the parliamentary domain of

⁴⁵ Ardant p.534

⁴⁶ Stevens *et passim*

⁴⁷ This is significantly diminished however as regards criminal liability since 1995. Ardant notes that immunity exists only in relation to acts '*commis en dehors des fonctions*'. p. 514

⁴⁸ Knapp and Wright p.152

the determination of '*principes*' ('principles') the enumerated list seems equally as impressive in theory eg. the general organisation of national defence, education, labour law.⁴⁹

Beyond Article 34, Article 53 strictly requires certain treaties⁵⁰ to be submitted to parliament for approval in the form of *loi* (legislation). Article 35 guarantees Parliament the power to declare war. The limited scope of Article 66-2 (the protection of individual freedoms) and Article 72 (the administration of local *collectivités*) add to the theoretical plethora of powers.

(B) Practice

The textually limited powers of parliament are theoretically deceptive and are much greater in **practice**.

(1) The Government indirectly augmented the parliamentary powers by exercising a marked deference in the use of its own legitimate weapons. Article 41, permits government recourse to the *Conseil Constitutionnel* in the defence of its own legitimate legislative domain before promulgation of a *loi*. It has however been infrequently utilised.⁵¹

The political idiosyncrasies of *cohabitation* also precipitated an elevated status of parliamentary powers. The complete absence of Article 49-3 from 1996 to 2003 illustrates this. Prime Minister Jospin, (1997-2002) had admirably refused to utilise it on the grounds of '*la valorisation du travail du Parlement*' ('*the enhancement of parliamentary work*'), ensuring it now has '*une mauvaise réputation.*' ('a bad reputation') Thus parliamentary amendments are in practice extremely effective. The adoption of the *Pacs* in 1999 necessitated one year and 106 hours of debates to secure enactment⁵².

Legislative provisions since 1958 have also emancipated parliamentary powers from the strictures of the original constitutional text. Ardant notes that '*ces réformes sont intéressantes car elles témoignent, pour la première fois dans l'histoire de la Ve République, de la volonté des parlementaires de chercher à rééquilibrer en leur faveur leurs rapports avec l'exécutif.*' ('these reforms are interesting because they

⁴⁹ Conversely in Ireland Article 15 of Bunreacht na hÉireann ascribes legislative power solely to the parliament, engendering the vexed judicial subtleties of *ultra vires* and the 'principles and policies test' when the executive invades its coveted legislative domain.

⁵⁰ Including those concerning peace, commerce and other international organisation treaties that would modify State finances or the status of persons etc.

⁵¹ It was last used in 1979.

⁵² *Le Monde*, 12/02/03

show, for the very first time in the history of the Fifth Republic, members of Parliament trying to find a more favourable balance in their relations with the executive')⁵³

The Constitutional Act of 24th October 1974, despite being pejoratively viewed by some pessimists as *une reformette* ('a so-called reform') extended the power of *Conseil Constitutionnel* reference to 60 deputies and 60 senators. This development profoundly increased the number of such references,⁵⁴ illustrating its effectiveness in practice as a concrete parliamentary power.

The Constitutional Act of 25 June 1992, permitting parliamentary referral of international treaties to the *Conseil Constitutionnel* and the Constitutional reforms of 1995 and 1996, ameliorates in practice the parliamentary monitoring of both finance and social security bills. The parliament, therefore, is empowered in an imperative element of taxation, further increasing the corpus of its legislative powers. Similarly in 1992, as an adjunct to incorporation of the Treaty of Maastricht, parliament was granted the extended role of presenting opinions on proposed European legislation before submission to the Council of Ministers for approval. Parliament therefore now controls many areas that had previously been the sole prerogative of the government.

Other ameliorations in the legislative competence of parliament include the designation of a specific monthly session to '*propositions de lois* ('Private member's Bill')', precipitating a corresponding increase in parliament's share as a source of legislative provisions. Knapp and Wright suggests that its share of total legislation is now approaching that of the Deutscher Bundestag which is far ahead of the British House of Commons which Debré so zealously wished to emulate in his constitutional theory.⁵⁵ A caveat however, qualifies this point in view of the propensity of government to disguise controversial provisions in the cloak of *propositions de lois*.

The establishment of various '*missions d'évaluations*' ('assessment committees') extended exponentially in practice the role of parliament as the principal evaluator of government policy and its subsequent implementation. Changes to the Standing Orders of the Houses during the 1988-1992 administration empowered the parliament in this way.

⁵³ Ardant p.553

⁵⁴ Averages 1 annually before 1974 increasing to 10 thereafter.

⁵⁵ Minister for Justice under De Gaulle. He was influential in the drafting of the 1958 Constitution. See Ardant p.417 and Knapp and Wright p. 137 et passim

The formal committees, facilitated in theory by the Constitution, have also been remarkably successful. In 1994 the finance committee investigated the dubious investments and the consequential ‘black hole’ in the finances of the then State owned bank Credit Lyonnais, finding ultimately that its corrupt operators had ‘skimmed of billions.’ The consequences are still felt acutely today. The latest Franco- American clash⁵⁶ centres on a fraud trial in the US and the possible extradition of a former operator of Credit Lyonnais. The origins of the crisis can be traced back to the innovative parliamentary findings of 1994.

(2) The *Conseil Constitutionnel*, originally conceived as the ultimate guarantor of executive power, has significantly extended the competences of parliament in practice.

Firstly, the ‘revolutionary’ decision of 16th July 1971 transformed constitutional law by fundamentally extending the terms of reference of the *Conseil Constitutionnel*. It ruled that *lois* must conform not only with the 1958 text but also with the 1946 Constitution’s Preamble and the *Declaration des Droits de l’Homme et du Citoyen 1789* (‘Declaration of human and civil rights’), both containing many specifically enumerated civil, political and social rights. This power now significantly prolongs a battle lost in parliament for many deputies.

Finally the *Conseil Constitutionnel* in the *Séguin amendment* decision⁵⁷ struck down legislation since it fundamentally abused the parliamentary powers of legislative process. The government had tabled 17 articles of an unsuccessful *ordonnance* (ordinance)⁵⁸ as an amendment to an act then in its final stages. Article 49-3 was utilised to secure its enactment. Additional control of illegitimate government domination to the benefit of parliament was recently illustrated in the Hunting Law case.⁵⁹ The *Conseil Constitutionnel* here refused to permit as constitutionally permissible a change in interpretation of the bill after it had been passed.

In practice, thus, the Parliamentary powers are far from being as narrowly defined as was originally conceived in 1958. There exists certainly a significant

⁵⁶ See the International Herald Tribune 04/12/2003, ‘Bank case adds strain to ties with France.’

⁵⁷ 23rd January 1987

⁵⁸ Article 38: ‘*Les ordonnances sont prises en Conseil des ministres après avis du Conseil d’État. Elles entrent en vigueur dès leur publication mais deviennent caduques si le projet de loi de ratification n’est pas déposé devant le Parlement avant la date fixée par la loi d’habilitation.*’ Here the President, during a period of *cohabitation*, had refused to sign the *ordonnance*, as required by Article 13.

⁵⁹ 20th of July 2000

theoretical deficit between the organs of government but political, judicial and legislative practice has increasingly redressed the balance ensuring that the corset of the constitution does not excessively constrict democracy at the expense of administrative efficiency.

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