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THE DEVELOPMENT OF THE PRESENT CONSTITUTION OF FRANCE.

The American Academy of Political and Social Science has recently published a collection of the chief constitutional and organic laws of the French Republic.* This collection contains the three fundamental constitutional laws of 1875, and the "organic" laws passed in the same year relating to the election of deputies and senators. The latter may be considered as a supplement to the constitutional laws themselves, although in their form they do not constitute a part of the constitution properly so-called. Finally, there are the more recently enacted laws, including amendments to the constitution, as well as the ordinary legislation which relates to matters regulated by the organic laws just mentioned.

It is only necessary to glance at the list of these laws to see that periodical changes have occurred in France in the field of constitutional law, and that a process of revision is taking place which forms a distinct evolution. It would

* "The Constitutional and Organic Laws of France." Translated with an Historical Introduction. By C. F. A. Currier. Supplement to the ANNALS, March, 1893.

seem interesting, then, to follow the current of development of which we have the successive manifestations in the different laws passed since 1875, and seek to determine the direction of the movement. The present study, which is naturally suggested by the list of legislative changes included in the collection published by the Academy, may be considered as an elaboration of the topics therein included, and may not be superfluous for an understanding of the French constitution, especially of its gradual development, the character of which has not, as yet, received adequate attention.

I.

The first point to be emphasized is the tendency which now leads the French legislator to render the transformation of the constitutional laws easier by transferring to the domain of ordinary legislation, that is to say, placing within the normal competence of Parliament, matters belonging to the domain of constitutional law.* This is exactly contrary to the traditional proceeding in France. France is the country par excellence, where the distinction between the constituent power and the constituted powers has become classical.† This distinction, originated by Siéyès, was recognized in the sense attributed to it in France in all the constitutions of the revolutionary period, and by the republican constitution of 1848. It is, moreover, in harmony with the principle of the sovereignty of the people, as it is derived from the dogma of the social contract. For it would seem but logical that the people should reserve for themselves the right to interfere directly when there is a question of revising the fundamental compact of the political organization. Its

* For example, the amendment of June 21, 1879, which strikes out from the constitution the provisions relating to the seat of government, that of August 14, 1884, Article 3, which deprives of their constitutional force, Articles 1-7 of the Constitutional Laws of February, 1875. See Prof. Currier's Translation, p. 50.

† Cf. Ducrocq, whose opinion may well be considered, owing to his great reputation as the representative of the classical tenets in this matter.

ordinary representatives, the members of the legislative body, are of course qualified to administer the affairs of the country conformably to the provisions of the social compact, but they would not, however, appear to be qualified to alter the latter in its essential elements.* It is in this way that the theoretical distinction originates between the two species of powers, regarded as functions, one the power from which emanate all the others, the *constituent* power; the other, the powers which this latter has conferred and established, namely, the *constituted* powers.

This theory is, however, open to objection if the powers are treated as distinct functions, independently of the organs which correspond to them. For, it is not easy to see what this asserted constituent power is aside from the political sovereignty itself. If it is the supreme power from which the whole political organization of the country is derived, it becomes identical, as is apparent, with the sovereignty which belongs, according to the theory one accepts, either to the people, regarded as the numerical sum of the citizens who compose it, or better to the nation looked upon as an organic body, as an individual in the political world, having as such a legal personality proper to itself, and, consequently, a true autonomy.† The distinction becomes even more subject to criticism if one looks at it from the standpoint of the powers taken in the sense of organs destined to fulfill different functions, and among which the totality of power is distributed. Consequently, the only practical result which can be drawn from the preceding distinction, is that there must be special organs corresponding to the two classes of powers, the existence of which is recognized. A constituent organ must be created which shall be distinct from the legislative power, which shall be charged with the exercise of the constituent function. It was in this way that the French constitutions

* Cf. Bourgeaud's excellent work, "*L'Etablissement et revision des Constitutions*," p. 239.

† Cf. Haurion "*Précis de droit administratif*," 2m. Ed. p. 5 et seq.

which recognized this distinction, provided for the contingent assembling of constitutional conventions, or organized, with a view to possible ulterior modifications of the constitution, conventions for the purpose of revision, which were to be convoked with special solemnity, and to which was assigned the high function of developing the constitution itself. This is a system remarkably well adapted to a constitution such as that of the United States, which rests fundamentally upon the idea of a compact concluded between the States forming the Union, in such a manner that it may not be modified except in virtue of a special power conferred for this purpose by the States and people upon representatives authorized to treat thus in the name of contracting parties, and, with the reservation of an ulterior ratification, or at least a partial ratification by the States themselves.* But when we find ourselves in the presence of a collection of citizens, of which the whole mass, without any organic grouping, forms the political community, the contracting parties who alone can have the qualifications to revise the social contract, are the members of the social body taken individually, at least, if one accepts the theory of Rousseau. In his theory, the only logical system would be that of the referendum, or, at least, of a constitutional assembly chosen by direct vote, and in view of the definite point to which the revision is confined.

The most illogical thing in the world, continuing to look at the matter from the standpoint of the sovereignty of the people, is the admission that representatives chosen solely with a view to the performance of legislative functions, and without any special prerogatives bearing upon a revision of the constitution, can, at a given moment, elevate themselves into a sovereign assembly, thus assuming the monopoly of the national sovereignty necessary to form themselves into a constituent assembly. Even in the case of a constituent assembly, chosen by direct vote and with special powers, it

*See Bryce "American Commonwealth," Vol. i, Cap. xxxii, and Boutmy "Studies in Constitutional Law," translated by E. M. Dicey.

may always be asked whether this assembly, which is never actually anything other than a representative assembly,* whatever name we may give it, may claim for itself the sovereignty, and if, consequently, it can, of its own right, and without reserving to the people the privilege of express or tacit ratification, exercise this asserted constituent power. For this is, after all, only the expression of sovereignty itself, which cannot be any more delegated than it can be alienated.

The efforts, then, which have been made in France to adjust ourselves to the logic of the dogma of the social contract, have by no means attained their end. However, by the side of the doctrinaire tendencies another tendency, and one entirely opposed, may be noted in the various constitutional systems in France during the past century, which have adjusted themselves to the requirements of parliamentary theories. In the Charter of 1814 and in that of 1830, we find no mention of any distinction between the constituent and the constituted powers, much less any attempt to organize an assembly of revision f r the formation of constitutional laws. This is a reversion to the English system granting a general competence to Parliament in regard to constitutional as well as ordinary legislative functions. It is in fact a recognition that the laws relating to constitutional matters belong really by nature with the ordinary laws within the domain of the legislative power. This would clearly be the case, unless it were a question of changing the form of the state as a whole. An act of this kind would be revolution, and no power is organized with a view to revolution, for that is the direct exercise of national sovereignty, and no assembly could be regularly instituted in view of exigencies of this character. Neglecting this point, however, it is impossible to see how there can be any difference in nature between those laws which, while they do not alter the form of the state, still relate to constitutional matters, and the ordinary

* Cf. Borgeaud, *op. cit.*, p. 222 et seq.

laws, or in what sense laws of that character may be said to be excluded from the competence of the legislative power.* At most, one may say in a country which possesses a written constitution, that since those topics comprised in the constitution, were regarded as having special importance, it may be rational to organize a special legislative mechanism when it is necessary to modify them. But even in this case, the organ created in view of this exigency still remains a legislative organ, constituent only in name. It is, as M. Guizot once said on a well-known occasion in 1842: "a holiday legislative power as opposed to every-day legislation." † This is not, moreover, simply a quibble, for if these assemblies, summoned for the purpose of revision, are looked upon as exercising only a slightly modified form of legislative power, and as constituting only a special form given to the Parliament, there is assuredly no question of sovereign assemblies invested with the plenitude of sovereignty and superior to Parliament itself. We have simply the Parliament acting with somewhat different forms and with special guarantees directed toward a greater stability in the provisions of the constitution. In the same way, under the present constitution, there can be no question, since these exceptional assemblies are not sovereign, of attributing to them an unlimited power of revision which may be extended beyond those points foreseen by the two chambers. The chambers only decide to convoke the National Assembly as a convention for the discussion of certain specified articles, and, consequently, the convention which depends upon this previous arrangement for all its powers, has only jurisdiction upon those subjects for which it is called together. This is the theory which has finally asserted itself in the

* Cf. Palma, "*Corso di diritto costituzionale*," Ed., 1884, Vol. i, p. 204 et seq., and Lefebvre, "*Étude sur les lois constitutionelles de 1875*," Paris, 1882, p. 208 et seq.; also Dicey, "Introduction to the Study of the Law of the Constitution," p. 84.

† "*Memoires pour servir a l'histoire de mon temps*," Vol. vii, p. 26.

interpretation of Article 8 of the Constitutional Law of February 25, 1875.*

This being granted, there is no doubt of the position which the present Constitution of 1875 takes on this constitutional question, in opposition, as is apparent, to that of the theory of the social contract. At first sight, one might be inclined to believe the contrary, since this constitution provides for and organizes a revisionary body, a fact which would seem to throw it into the class of republican constitutions of the revolutionary epoch, and that of 1848. Such an inference would, however, be a gross error.

The numerous constitutions which have succeeded each other in France during the past century fall naturally into three groups. (1) There is a class which attempts to carry out, in its extreme logical form, an organization based upon the sovereignty of the people, and which establishes, consequently, what we may call a radical form of government, using this term "radical" in a truly scientific sense, and not in the usual bad sense in which it is employed in politics. (2) Others have organized simply a representative system and, finally, (3) there are those which belong to the parliamentary group. It is apparent that in establishing this distinction, based upon the intrinsic character of the government, no reference has been made to the form given to the executive power, whether republican, monarchical or imperial. The matter of political form is becoming more and more an accidental and fortuitous element of which the influence, from a scientific standpoint, may be relegated to a secondary place. We all know that Rousseau regarded the political organization which he described and which he derived from the fundamental postulate of the social contract, as perfectly compatible with royalty, a system afterward actually realized in France under the empire. France is now making an experiment for the rest of Europe, just as it has made so many

*Cf. Lefebvre, *op. cit.*, p. 218, n. 1; André Lebon, "*Das Staatsrecht der französischen Republik*" in Marquardsen's "*Handbuch*," Bd. iv, Sechste Abtheilung, pp. 73-76.

before this time, of the application of the parliamentary system under a republican form of government.

It is incontestable that the present French constitution belongs to the parliamentary group, and, moreover, so far as the principle of sovereignty is concerned, we must, in spite of its republican label, class it in the category which includes the monarchical constitutions of 1814 and 1830. The justness of this classification will appear in our subsequent pages, the resemblance not being confined to the similarity of the political régimes resulting from the parliamentary form. For the moment, it is only necessary to establish the analogy in the case of the particular point in question, that of the separate existence of a constituent power. In order clearly to grasp this analogy, we need only observe the form given to the organ destined to correspond to this asserted constituent power. The National Assembly, commonly known as "the Congress," as it was established by the Constitution of 1875, is nothing more than the union into a single chamber of the two Houses of Parliament. A constitutional convention or assembly, elected directly by the people for the purpose of revising the constitution, is not required, but the constitution may be amended by the Parliament composed as it is at the moment when the single assembly is formed for the purpose of revision. It is not even necessary, as in Belgium, that the House elected by direct vote, should be re-elected. The result is, that the deputies, who, at the time of their election, were not chosen in any sense with a view to a possible revision of the constitution, decide some fine day that there is something to alter in the constitution. They obtain the consent of the Senate, and the two chambers proceed, mayhap much to the astonishment of their constituents, who had in no way authorized them in this matter, to overturn the constitutional compact, if necessary to modify it from end to end. What difference is there then between this system and that of the Parliament of England, with the absolute power accorded it?

There is, however, one difference. In England laws relating to constitutional matters (we have to say constitutional matters and not constitutional laws, for formally speaking there can be no constitutional laws so long as there is no written constitution) are subject to the same safeguards as all others. In France, however, the constitutional laws have one less security, that which results from the existence of a bicameral system. Undoubtedly the absence of this safeguard has been little more than apparent up to this time, thanks to the system of a limited program which has heretofore prevailed in the National Assemblies. For it has been acknowledged that this Congress could not go beyond the range of questions foreseen and discussed in the deliberations of the two chambers. Now, as a matter of fact, when one of the chambers votes for a meeting of the Congress, with the purpose of revising some one clause of the constitution, it knows very well just how it would like to have it revised, and that the changes which it has in view are backed up by a majority in that chamber itself, and if the other chamber agrees to decree a meeting of the Congress with the purpose of revising the same clause in the constitution, this shows that it too has a majority in favor of this measure, and thoroughly understands exactly how the revision is to take place. Thus, the measures which are to be carried later in the Congress, have already received the tacit sanction of the two chambers voting separately. * But this is not practicable, except for very simple questions which lend themselves to a somewhat crude decision, and does not permit careful adjustments and adaptations where an opinion cannot be formed in advance, but must depend upon the enlightening effects of debate and discussion. As soon as we have to deal with more complicated questions, the solution of which must be reached after somewhat minute study, and

* Since the revision of 1884 it has been said with truth that the National Assembly is scarcely more than a body for the registration of the decrees of the chambers. Cf. Lebon, *op. cit.*, p. 75.

a previous discussion, the reasoning above loses its force. We may no longer speak of a sort of previous tacit vote in the two chambers, taking the form of a decision that it is necessary to revise the constitution on such and such points. This method of reasoning obviously fails entirely should the Congress, betraying the confidence which has been imposed in it by the chambers who called it together only for the purpose of considering certain specified points which they themselves had determined,—arrogate to itself an unlimited power and undertake to discuss the fundamental provisions of the constitution without any previous authorization. This danger, however, always exists when the Congress is assembled and it is perfectly correct to say that such revisionary laws do not enjoy, in principle at least, the advantage of previous discussion and a double vote of the two separate assemblies. The check then which results from the duality of the legislative organ is here wanting.*

The only explanation, which, one can give of this institution, is that it was organized with a view of rendering the changes in the constitution less frequent by means of this always somewhat complicated system of calling together a National Assembly. Historically, moreover, the National Assembly of 1875, which as we all remember, was a unitary body, did not believe in the long duration of the republican constitution which it had just drawn up. Originally, at least, they appear to have aimed only at organizing the "Septennat." They believed that by the end of the seven years, the provisional government which they established would come to an end, and that, consequently, the National Assembly would come together again in its customary form of a single chamber, in order to establish a final system of government for the country. Thus for a variety of reasons it is difficult to regard the National Assembly as invested

* A like admission may be found, apropos of the clauses relating to the election of the Senators which were eliminated from the constitution in 1884, in M. Pyfferoen's work, "*Du Senat en France et dans le Pays Bas.*" Bruxelles et Paris, 1892, p. 20.

with special powers by the nation for the purpose of revising the constitution. It is really only another form of the legislative body. It is the legislative power of Parliament organizing itself in a specially solemn manner, for the purpose of voting a law which shall form a part of the constitution. The revisionary laws, in their essence, if not in their form and mode of elaboration, remain laws emanating from the legislative power of the country and not from an asserted constitutional power. It is at bottom the English system, and that of the parliamentary governments which have existed in France before 1875. Hence, the revisionary laws have, according to the Constitution of 1875, the character of the laws proceeding from the legislative power, in spite of the somewhat peculiar way in which this acts when it is a question of modifying the constitution. Still in the matter of form, these are subject to conditions which may properly be termed "extraordinary."

Now, the first tendency which may be pointed out, is that of exempting more and more constitutional matters from this special mode of revision, in order to replace them in the domain of the ordinary procedure of the legislative power. It is certainly very remarkable that the regulation, if not the principle, of universal suffrage was left entirely within the domain of ordinary legislation, and did not form a part of the constitution, properly so called. Whether this was an advantageous trait or not we need not decide. If it had been necessary to call together the National Assembly every time the political current modified the method of voting, superseding a method of single votes by that of districts, or *vice versa*, and, moreover, if it were necessary in the future to go through this form every time that a change of this kind took place, in consequence of a change of political fortune, the prestige of this unusual and solemn method of procedure would certainly risk a serious compromise.

The provisions, however, relative to the formation of the Senate, found a place in the constitution, since the Senate

was the cornerstone, the existence of which the authors of the constitution were anxious to assure. Now, the revision of 1884 abrogated Articles I to VII of the law of the twenty-fourth of February, 1875, these provisions being almost immediately replaced by a new organization, which we will take up presently, established by an organic law passed with the usual forms of legislation by the Parliament, namely, the law of the ninth of December, 1884. Hereafter, Parliament can modify at its good pleasure the composition and organization of the Senate as well as of the Chamber without calling together the National Assembly at all.

The conclusion is that in France we are deserting more and more the idea of a written constitution, containing all the political and constitutional organization of the country and looked upon as the result of the constitutional power. This type, traditional in France since the Constitution of 1791, is in no respect realized by the so-called Constitution of 1875.* Far from being a peculiar document containing the whole organization of the government, it is made up of three constitutional fragments, three laws voted one after the other, the whole offering no regular plan, the parts, in fact, seeming so entirely different in their nature that it would be difficult, placing them end to end, to consider them as three chapters of the same constitution, each treating of some special point. They are, in reality, dispositions relative to questions most subject to discussion, and which it appeared at the time most essential to render plain, everything being treated according to the accidental preoccupations of the moment. Everything relating to the choice of deputies is left out of the constitution. A portion of the clauses relating to the election of senators indeed finds a place there, but the remainder were left in the domain of ordinary legislation. There is, moreover, not a word about the judicial power.

This multiplicity of constitutional laws might seem a

* Cf. Lefebvre, *op. cit.*, p. 20 et seq.

matter of indifference, one of mere form only. The explanation which is in large part to be found in the difficulty of coming to an understanding in regard to the name to be given to the executive we shall discuss later. The portion relating to the Senate is disconnected with the rest. So far as the law of the sixteenth of July, 1875, is concerned, which deals with the relations between the various public authorities, it was drawn up later when the defects and insufficiency of the other two had become clear. This fragmentary form, then, is altogether accidental; it has, nevertheless, been sufficient entirely to alter the character of the French constitution. It certainly shocks the mind of everyone accustomed to systematic presentation, who believes that a constitution ought to contain a logical and complete plan of governmental organization. But who knows, it is perhaps to this little fact that we owe the acceptance of a republic in France. It often happens that little things, even very little things, are sufficient to engender new conceptions; these new conceptions giving rise in their turn to new habits, and new points of view differing from those of the traditional routine. These are the things which concur to reform the political education of a country. This, then, is the novel element in the conception realized by the present constitution. It is because of its fragmentary form and the fact that the constitution does not contain everything, and has not elaborated the whole political and administrative organization upon a single plan, that something is recognized as existing before it, and that this something has continued to exist since. In other words, it is felt that the present institutions of France have not resulted from a single voluntary creative act on the part of the legislator, but that the legislator was content to establish certain particular institutions only, and that the whole adjustment of the governmental organism resulted from the organic social development of the French during this century. The Constitution, not owing its origin to a written law, continues to develop

and shape itself outside of the written law under the influence of this social life itself. An organic constitution is, therefore, being created in France, based upon the foundation furnished by the written constitution. The French system tends in this way to approach the English type,* except that in England the relation between the two elements of the constitution is exactly reversed. There the whole basis of the constitution has resulted from the spontaneous development of customs and historical traditions, with the exception of certain legislative acts in the form of compacts and statutes containing special guarantees. In France, on the other hand, until recently only the system of written constitutions has been known, at least in theory, which should contain everything, and outside of which nothing should have any legal existence.

The written constitution has at last begun to give way, and through its seams spontaneous growths of living institutions are pushing their way, drawing their nourishment from the developing social body itself, and not from the more or less opportune interference of the legislator. Undoubtedly, in despite of all asserted positive legislation, there have always been these spontaneous, unperceived growths, as these occur in all constitutions. That which is new in the present constitution is the recognition of the legality of this development, and the absence of any claim to deduce everything from the written text. The present constitution does not even contain the traditional declaration of rights, a remarkable omission in a French constitution. It will be remembered that this republican constitution was made by monarchists, and it might perhaps be a source of congratulation, if the organization of all political systems were turned over to their opponents. For this would, so to speak, reduce the system to a minimum, and in that way avoid all sorts of unfortunate excesses. In short, the famous principles of 1789 find no place in the Constitution of 1875. Are we to infer from

* Cf. Boutmy, *op. cit.*, p. 141 of the translation.

this that these were not recognized as the basis of the political constitution of the country? No one would defend such a view.* The vagueness of their formulation renders them so useless as written articles and so incapable of any real sanction, that it may be regarded as an eminently wise measure no longer to include them in the body of rules of positive law. Political conceptions which gave rise to them do not the less form the basis of our institutions. This proves that there are outside of the written constitution, not only institutions existing in the form of organized bodies, but traditions as well, which exist legally without the sanction of any written clause. It is undeniable that by placing the French constitution in the midst of the organic elements of the country, and depriving it of the character of a written constitution, which the least revolution has proved sufficient to overthrow, the Convention of 1875 has insured, contrary, it is true, to its aims and secret wishes, the existence of the organization which it founded. It has restored, in fact, the French constitution to the domain of historical evolution. This alone, in view of the inextricable complications which are constantly occurring, can place the political organization of the country upon a solid basis capable of resisting all internal shocks. This process of evolution, so frankly encouraged in the initial form given to the Constitution of 1875, is farther attested and facilitated by the tendency which has already been mentioned to leave this asserted constitutional power in abeyance, in order to substitute for it the usual legislative power, acting under the usual forms, and without any special solemnity. The constitutional power is, henceforth, relegated to its proper place; it is no longer to be found in a convention of delegates for the purpose, but exists in the real and living autonomy of that personality at once historical and legal which is called the nation. It is to be sought in the natural development of the nation itself, and in the action of its

* Cf. Borgeaud *op cit.*, p. 239.

normal organs, which serve to manifest its legal vitality, and, consequently, to dictate the legislative measures of the country.

II.

Having thus shown the circumstances of the evolution, we have now to take a rapid view of the direction which this evolution has taken since 1875. In general it may be said that it is quite difficult, if we confine ourselves to the observation of the laws properly so called, to discover the slightest organic tendency in the changes which have taken place since these are scarcely attributable to anything more than political accidents. We must, however, try to discover if, hidden beneath this political surface, there are not certain national undercurrents which will some day come to light, showing radical transformations until then unperceived.

The constitutional laws of France, and those referring to the constitutional organization, relate to scarcely anything except the legislative and the executive powers, and their reciprocal relations. They leave to one side, in the purely constitutional documents, the judicial power which has only been touched by the law of August 30, 1883, in which a fatal intrusion of politics, impaired a reform which would otherwise have been very opportune.*

In regard to the legislative power they take up the organization of the Chamber of Deputies and of the Senate and, leaving aside judicial questions, it may be said that the later legislative modifications have related almost exclusively to these two great bodies which form the Parliament. Let us see, however, if certain new conceptions have not made their appearance respecting the executive power.

* The consequences of this law, from a social standpoint, still weigh heavily upon the country and show themselves in a state of unrest and a ferment of discontent absolutely incompatible with the normal action of the vital and healthy elements of the nation.

Let us consider first, the right of suffrage. The principle of universal suffrage is embodied in the constitution itself; but its regulation has been left in the domain of ordinary legislation. Such regulations are found in the law of November 30, 1875, so far as legislative elections are concerned, municipal elections having been already provided for in the law of 1874, to which that of 1875 expressly refers. Later laws have not indeed affected the principle of universal suffrage itself, although two innovations with opposite tendencies are apparent, one of which has extended the application of this principle; the other having, on the contrary, restricted its range of action. The extension affects the municipal elections. The restriction is due to the law of July 17, 1889, relating to multiple candidatures, which by imposing certain formalities upon the candidates, has attacked what used formerly to be called the absolute sovereignty of universal suffrage. It would be unnecessary to discuss the reforms affecting the municipal laws, for these have little relation to the evolution of constitutional law, properly so called, were it not that the municipal law of 1884 modified in a very essential respect the provisions of the organic law of 1875 relating to the election of deputies.

Article I of the electoral law of 1875 provides for a double list of electors. The first list comprised the electors registered for municipal elections, the second included those who, not being municipal electors, might, nevertheless, vote for members of the chambers. Contrary to what often happens the number of those who might take part in municipal elections appears to have been less than those who might vote for the members of the legislative bodies.

This was, however, only a matter of form which affected in no way the rights of universal suffrage, properly so called. It was only a question of domicile, and it is easy to see how the municipal franchise might be limited by conditions of residence, more strict than those required in the elections for deputies. In the election of deputies, residence qualifications

have only a secondary importance, as, for example, in securing an individual's stability in order to avoid permitting vagabonds to vote. In the case of municipal elections, the connection with a municipal group, or the existence of sufficient local interests are naturally necessary in order to justify the right to vote in the locality. This condition takes the place of the acquisition of the rights of the city, which is to-day practically non-existent in France. Carrying out these ideas, the law of 1874 made certain distinctions according as an individual was an original inhabitant of the commune or not, and being an original inhabitant he had continued to reside there, or had left the place, later to return and re-establish his home there, or, lastly, in cases where an individual had not been born in a city, whether or not he had married an inhabitant of the commune. Moreover, this law made the conditions more favorable for those individuals who, although they had not originally lived in the commune, had material interests there, indicated by the appearance of their names among the list of those who paid direct taxes, as well as those who performed some public function. In certain cases, without entering into farther detail, the condition of residence might be one year or even two years, in the case, for example, of those who did not belong to the commune originally, and who had neither married an inhabitant of the commune, nor were enrolled among those paying direct taxes. Such persons might have to wait two years before their names could appear upon the lists of voters in the town.

In the case of the elections to either of the legislative bodies, on the contrary, the law contents itself with a requirement of a residence of six months in any commune. Now, since the voting is done by communes, and the lists of electors, in the case of elections for the legislative bodies, are drawn up by communes, it was necessary that in each commune a double list should be prepared. One contained the names of the local electors, all of whom were at the same

time obviously electors for the legislative body, while a second supplementary list, included those who, while they were not local electors, still had the right to vote in parliamentary elections.* In order to have a complete list of those entitled to vote in the election of deputies, it was obviously necessary to include both lists. The municipal law of April 5, 1884, has, however, unified the conditions of residence so that they are now the same in the case of municipal elections and in those of the deputies. All those who may vote for members of the Municipal Council can also vote for members of the Chamber of Deputies. There is, consequently, only a single electoral list drawn up in conformity to the conditions enumerated in Article XIV of the law of April 5, 1884.

Let us return now to the second innovation mentioned above; which has to do with the election of deputies, and which involves a very singular restriction of the rights of universal suffrage, viz., that introduced by the law of July 17, 1889, in regard to multiple candidacies. So far as the election of deputies is concerned, the innovations affecting the organic law of November 30, 1875, with the exception of this law of 1889, just alluded to, which will be considered later, constitute hardly more than a regular oscillation between the system of tickets for single districts, and the *scrutin de liste*† or general ticket. This is an oscillation to which we are accustomed in France, for it has taken place under all the régimes, and with the same periodical fluctuation

* Organic law of November 30, 1875, Articles 1, 2.

† For the sake of completeness an innovation in the matter of naturalization ought to be mentioned which was introduced by the law of June 26, 1889; Article III provides that a duly naturalized citizen shall enjoy all civil and political rights of a French citizen, except eligibility to the legislative bodies, which is acquired after ten years has elapsed from the date of naturalization. A special law may, however, reduce this term to a single year. This suggests the earlier system, the so-called "*grand naturalization*" under which naturalized citizens could *only* enjoy the right of eligibility in virtue of a special law or decree (Royal ordinance of June 4, 1814, and the law of December 3, 1849). Cf. "*Annuaire de legislation française*" published by the Société de Legislation comparee for an account of this law, (1890 p. 136).

ever since the Constitution of 1791. From 1791 to 1889 France has had alternately the single district system six times, and the *scrutin de liste* six times. In all this list of alterations, the system has been changed but twice since 1875; once in 1885 by substituting the *scrutin de liste* for the single district system established in 1875, and the other, a return in 1889, to the former method. We ought to remember that the establishment of the single district system in 1875 was really an innovation as regards the previously existing plan since the National Assembly of 1871 was elected conformably to the law of March 15, 1849, which was considered after the fall of the empire as again in force.

In view of these periodical changes, it would seem at first sight as if no decisive tendency had shown itself in France during the course of the century, in favor of one of the methods of voting rather than the other, the matter being decided according to political interests, the party in power choosing the mode of election most favorable to itself. This tendency toward constant fluctuation is not, however, so apparent to-day and we are led to believe that the triumph of the system of tickets containing a single name, is definitely assured for the future. As a matter of fact, during the somewhat troublous period which France went through in 1889, not only was the system of uninominal tickets re-established, but the system was fortified by the law of July 17, 1889, relating to multiple candidacies which emphasizes the abolition of the general ticket and is inimical to the ideas represented by that system. This predominance of the uninominal ticket is all the more curious since the general ticket, as Professor Currier has very justly remarked in the interesting notice which he has prefaced to his translation of the Constitutional Laws, is precisely in line with the republican tradition in France. It has often been considered, perhaps erroneously, or at least through a distortion of a true conception, that it lies in the logic of universal suffrage to vote upon ideas rather than upon interests, especially purely

individual interests. Now, the uninominal ticket has in France the arrondissement as the basis of apportionment (hence, the expression "*scrutin d'arrondissement*,") and the arrondissement is so limited in extent, that ordinarily there exists within the voting district a very complete identity of interests. It naturally often happens that the candidate of the arrondissement has to take into consideration not only the local interests, but the individual interests of the more influential voters in his party.

The theoretical conception of the republican party in France, whenever it has emancipated itself from questions of expediency and political success, has always been distinctly opposed to this system of electoral subservience. It starts from the idea that there are only individuals in the state, all of whom ought to have in view the general interest, and, consequently, that this general interest ought to be the dominant and single aim in the case of all citizens called upon to exercise the right of suffrage. In order to produce this result, it is necessary to free the candidate from his subordination to local interests. The suffrage itself must be elevated, and brought under the influence of the great political currents—let us say "principles," since this word has for a long time been dear to the republican school in France. Consequently, it is necessary to include in each electoral district a sufficiently extended territory so that this may, on the one hand, be entitled to return several deputies, and, on the other hand, in order that the interests of the various parties which it includes, shall have some chance of differing upon points of detail, so that the candidates standing for a larger territorial area, and not for a single district, shall be obliged to raise themselves above mere local interests and take a stand upon questions of common interest. In this way they would be led to the conception of a wider and more comprehensive interest, susceptible of being identified with the general interest itself. Hence, we have the departmental ticket. If this result is not always reached owing to the

unity of interests which sometimes shows itself in all parts of the same department, one is still sure that the candidates while representing local interests must at least have in view the interests of an extended district, and not those of some little town in particular.

We secure in this way the enfranchisement of the candidate in advance, and, what is more important, his later emancipation, that is to say, his liberty as a deputy after having been elected. He escapes, in short, from the direct dependence on his constituents, and can, thereafter, more easily look at legislative questions which present themselves from the point of view of the general interests, and not from a purely local standpoint. This implies the abolition of the system of instruction which has also been formally abolished by law.* That system of underhand rule is thus discarded which the *scrutin d'arrondissement* has always brought with it in France, due to the fact that each deputy was the servant of his constituents, pledged to their interests if he wished to assure his re-election, always ready to favor them in the obtaining of places or favors, ready even to satisfy their political animosities. In order to accomplish this, the deputy besieged the ministers who became in this way the prey of the representatives, thus bringing about a régime of wire-pulling, which hampered the public service, and resulted in a servile subordination to personal questions. It may be said to the honor of republican tradition in France, that the ideals of the republican party, neglecting such exceptions as have been due to partisan interests, have always made it prefer the general ticket. This may be proved by referring to the campaign conducted by Gambetta in 1881, and to the forcible speeches which he made in favor of this last method of voting.†

It is true that in 1881, the republican party did not appear

* The law of November 30, 1875, Article 13.

† It may be noted that the study of comparative institutions shows that the district system predominates, a system approved by Laveleye. (See "*Gouvernement dans la Democratie*," Vol. ii, p. 78.)

to be dismayed by the way in which the *scrutin de liste* could be utilized in fostering the popularity of individuals, by the support which it might give to certain vigorous personalities who carried with them and brought within the sphere of their influence, all the other men whose names appeared upon the party ticket. This is what has been called the "towing-candidate" system, and while it seems to have aroused no apprehensions in 1881, in 1889 it was this danger which especially struck the republican party. They were afraid of a kind of plebiscitum on a small scale. They hastened to suppress the general ticket in order to return to the system of single candidates for each district, or even for each *quarter*, as happened in certain large cities. The influence of local committees, and we all know what that means, was thus substituted for that of committees of a great centre. The practically supreme influence of the Parisian committees constitutes, in fact, one of the most serious drawbacks to the *scrutin de liste* in France.

But it was also desired to prevent the possible application of the *scrutin d'arrondissement* itself in securing the electoral triumph of some popular candidate, although it certainly would require the most extraordinary popularity to have one's self elected in a sufficient number of arrondissements to render this election equivalent to a plebiscitum amounting to a presidential election, insuring the transfer of the candidate from his seat as deputy to the presidency of the republic. Such a thing could scarcely happen except in the case of the *scrutin de liste* and in favor of such a man as M. Thiers, for example, in 1871, under the influence of the events of that period. We experienced, however, the same phenomenon during the palmy days of the too famous General Boulanger.

The anomalous law of July 17, 1889, relating to plural-candidacies, was the result of these conditions, and transitory as it would seem to be, it still deserves some words of comment, if only to point out the disturbance which it has

produced in our habits and in the most obvious conditions of our constitutional growth.* A disturbance which must always accompany arbitrary measures passed with a view of checking a single individual. The whole import of this law lies in the prohibition found in Article I, that no one may be a candidate in more than one district at once.

An amendment of M. Wallon proposed that a candidate should be permitted to stand for election in *two* districts at once. This was rejected, since it was feared that an election in two arrondissements would constitute in reality a sort of little plebiscitum. But it is obvious that it was not sufficient simply to forbid multiple elections; the administration must be in a position to interfere at times in order to prevent these. It would be too late, if an election were allowed to take place in several districts at once, to intervene afterward in order to subject the candidate chosen by several districts, to the punishment provided by law. The plebiscitum would already have taken place; the general will would have declared itself, and have designated the candidate of its choice. How could this choice be nullified later when expressed so authoritatively! It was necessary, then, to hinder multiple elections from taking place, and in order to do this the administration must be officially notified of the candidacies. Hence each candidate is required to make a previous declaration at the prefecture of the department in which the district lies, where he intends to become a candidate, and this on the fifth day at latest before the election is to take place. A declaration made immediately before the election would come too late, and it was felt that should the administration permit the declaration to be deferred until the last moment, it might be taken by surprise and would no longer be in a position to take the necessary measures to notify the voters and hinder the general will from being misguided.

* The abrogation of this law has several times been discussed in the Chamber of Deputies.

The announcement of candidacy is the previous condition upon which the legitimacy of the candidacy depends, and, consequently, the legitimacy of all the acts of the candidate and those of his agents or representatives, for these may all be regarded as involved in the candidature. This first formality is accompanied by a second on the part of the administration, namely, the delivery of certificates to the effect that the candidate is legitimate and that his agents may therefore open the campaign, without having anything to fear from the law relating to multiple candidatures. The law of 1889 requires, however, the delivery of a double certificate; one to be issued at the moment when the declaration is made, indicating that it has been made, this being only a provisional certificate, the other is issued twenty-four hours later in the form of a definitive certificate. The first is easily understood. The candidate must have in hand some proof that he has complied with the provisions of the law by making a declaration, if not, he would scarcely find any one who would be willing to conduct the campaign for him,—hardly a printer to set up his professions of faith, or a bill-poster to post up his announcements. But what does the second certificate mean? In the interval of twenty-four hours the Prefect telegraphs to the Minister of the Interior, where the notices of candidature have been brought together. Time has been given to receive a reply or a warning in cases where the same candidate has offered himself in other districts. Should this be the case, the Prefect will put a stop to the campaign already commenced, or hinder one from being opened. If, on the contrary, the declaration is the only one which has been made, the second certificate is delivered, attesting that the declaration is regular, and that, consequently, the candidate may open his campaign.

This second certificate, it has been urged, is an authorization for the candidate. An attestation of the regularity of proceedings would have no meaning or utility except as it is an

indispensable preliminary to the exercise of the candidature itself. It has been concluded from this that the opening of the campaign is not regular until after the delivery of the second certificate, since this last is the one which authorizes the campaign. It is urged that this is dictated by good sense, since the candidate, in the interval between the issuing of the two certificates, would have time to inundate the country, fill the newspapers, and cover the walls with his manifestoes, and this in twenty districts at once, while the administration is taking counsel. On the morrow, the Prefects in the twenty districts, or at least in nineteen of them, would take measures to check the campaign, and tear down the announcements, and he might even take steps to prosecute the offender. This, however, would make little difference since everything has become public, announcements have been sent about and on the day of election the voters may cast their ballots for the candidate who is prosecuted by the administration and rendered thereby all the more popular.

But such a theory would in reality be the destruction of every sound principle. It would be equivalent to maintaining that every candidacy should be authorized by the administration, and yet the administration ought not to have any discretion except in the matter of plurality of candidacies,* and is, moreover, obliged to deliver the second certificate within twenty-four hours. But, let us suppose that a candidacy is arranged just at the close of the period permitted by law, and that the administration, on more or less plausible grounds, for which it would certainly be very difficult for the candidate (since we are all familiar with the difficulties which surround administrative justice in France) to render it responsible, impedes the delivery of the second certificate. As it would be necessary to wait for this in order to open the campaign, the candidacy would be prevented by the simple manipulations of government. We may thus conclude that in requiring that the declaration should be made at

* *Circulaire ministérielle* of August 29, 1889.

least the fifth day before the date of the election, the law understood that the candidate should have at least five free days for his campaign. Moreover, the Court of Cassation, and with it the whole legal profession, has decided that when a declaration is once made, the acts involved in the candidature shall be regarded as legitimate without awaiting a second certificate from the administration, and the agents of the candidate may undertake the campaign without having anything to fear, even when the administration shall discover that a number of simultaneous declarations have been made, and thus finds itself obliged to stop, so far as this shall be illegal, the campaign already commenced.* So soon as the first certificate is issued, the agents of the candidates, and all others involved, are protected from legal procedure.

It is, of course, well understood that should the electoral agents be proved to have known of the existence of a multiple candidacy, they become accomplices in this misdemeanor and may be prosecuted in accordance with the first clause of Article VI of the law. By saying that the electoral agents are protected by the delivery of the provisional certificate, no reference is of course made to the offence foreseen in the second clause of Article VI, which applies, without regard to any complicity in a multiple candidature, and, consequently, even if one knows nothing of this, to those who have carried on a campaign for a candidate who has not fulfilled the requirements exacted by law, understanding by these purely matters of form. From the standpoint of the agents, the formalities exacted by law have been met by the declaration which the candidate has made before the legal term had expired, and this is what is established by the preliminary certificate issued by the administration. Article IV, to which the second clause of Article VI expressly refers,

*See the various decisions of the *Cour d'Appel* brought together in the collection of Sirey, 1890, second part, p. 33 and note. Also the Court of Cassation, March 20 and 21, 1890; Sirey, 1891, I, p. 185.

has been invoked to prove the contrary. The penalties established by this last refer, in fact, to the offence provided for in Article IV, viz., the participation in an electoral campaign where the candidate has not conformed to the requirements of the present law. Now, it is said, that the requirements of the present law include three things—the act of declaration, a provisional certificate, and a final certificate (Article II). The natural reply would be that when we are speaking of requirements which the candidate must fulfill, we must understand those imposed on the candidate, and not those which devolve upon the administration. Now, the certificates are obligations devolving upon the administration in the interest of the candidate with a view to his security and in order that he may be able to furnish others with the proof that he has made his declaration, and that it is legitimate to begin a campaign for him without fearing the consesequences. It could not be otherwise unless the second certificate should have the character of a permission to offer one's self as a candidate. In this case the legitimacy of the candidature, even from the standpoint of a third person, would become a fundamental requirement and not merely a formal one, and a third person would not be authorized to undertake the campaign unless proof had been furnished him that the declaration made at the prefecture of their district was the only one that the candidate had made. Were this the case law would certainly have imposed upon them the duty of waiting until the fundamental proof of the legitimacy of the candidate had been obtained, instead of allowing them to proceed on the simple proof that the declaration had regularly and formally been made. Such is, in the last analysis, the conception which we ought to entertain of the formalities imposed by the law of 1889. Otherwise a third person could not act except upon the proof furnished of the singleness of the declaration, namely, the final certificate, and this certificate would become equivalent to an authorization on the part of the administration to be a candidate.

But there is not a single word in the law which forces us to accept this derogation from the most fundamental principles of constitutional law, nor has French jurisprudence accepted this interpretation. The use of the second certificate then, since it is not to *authorize* the candidacy while declaring it legitimate, is to reassure those who having already commenced the campaign might otherwise apprehend the intervention of the administration. The second certificate is simply to establish the fact that the declaration, made the day before, is the only one which has been made, and that, consequently, those engaged in the campaign need not fear that the administration will intervene to hinder them. They know that they are dealing with a candidate who, whatever may happen, can still present himself for election in their district, and it is but right that the candidate in his own interest should be able to furnish this assurance. Hence, it is the duty of the administration, when it has convinced itself of the legitimacy of the candidature, to deliver a second and final certificate.

As to the dangers, which it is objected, a premature opening of the campaign might cause, and which must be counteracted later, these are purely imaginary, since, and this is a new interference with the rules of the common law, the ballots which bear the name of a candidate, whose candidacy is rendered void in virtue of Article III of the law of 1889, must be annulled and may not be placed to the credit of the candidate.* It is not even left to the chamber to annul the election by a process of invalidation, hence the result of a proclamation that a single person has been elected in several districts is not to be feared. The result of all this is, then, that the second certificate has still the object of proving the regularity of the declaration, of which the

* This is a gross violation of the *droit commune* since this requires that irregular ballots shall be submitted with the electoral proceedings to the chamber, and may not be declared void by the electoral committee. By the present law this committee may declare a candidate elected who has not received a majority of the votes cast.

first has established the existence, but this proof of legitimacy is not necessary for opening the campaign. It is not the condition of validity, but a method for aiding the candidate who can put an end in this way to assertions of irregularity which might otherwise arise, and is therefore a formality established in his favor and not at his expense. Thus, in order that an electoral campaign may be opened, it should be understood that a formality is required of the candidate just as in certain countries the requirement has been established that a candidate should be supported by a certain number of voters, but this should be a unilateral formality not requiring any corresponding action on the part of the administration.

The first danger which threatens the principles of constitutional law, is that of a reconsideration on the part of the courts, which may at any moment cause the certificate of the administration, at least the final certificate, to be regarded no longer as the simple attestation of regularity, but as an authorization to stand as a candidate. There is a second danger, relating to the exact object, to which the proof of regularity relates. What is it precisely that the administration must investigate in order to declare a candidature regular? Certainly its investigation cannot extend farther than the fact that the candidate has or has not made a second declaration. It has only a material fact to determine; every consideration of legal conditions, of eligibility, is excluded. Were this not so the administration would act in advance for the Chamber itself, which is, and should be, judge of the validity of the election. But who can assure us that it will always confine itself to these wise principles? Should the administration find itself dealing with a manifestly ineligible candidate, in virtue of a condition of invalidity demonstrated by the facts themselves, might not it believe itself right, in virtue of the adage that an ounce of prevention is better than a pound of cure, to refuse the definite certificate, although several declarations should not have been made,

or even to stop the campaign, which might already have begun. Certainly this second possibility is hardly to be feared, if the candidate is legitimate so far as the law relating to multiple candidacy is concerned. But may not the first, which consists in the refusal of the final certificate, that is to say, not in an active intervention but a simple failure to act, be apparently justifiable, and is it not likely to present itself some day?

Should we, in the future, come to consider the second certificate in the light of an authorization of candidacy, would not the outcome be that the administration would become judge of the conditions of eligibility themselves before allowing a candidate to stand for election? Certainly we have not yet reached this point, but this arrangement is, nevertheless, full of dangers. So far the courts have valiantly striven to confine the law of July 17, 1889, to its minimum application. Will they, however, always be in a position to maintain firmly the principles which they have established?

We have to deal with a system of a somewhat artificial nature, which owes its origin to a crisis of political excitement, but still a system which carries a lesson with it. A whole school, and precisely that school which was the first to demand and vote for the law relating to multiple candidacies, profess an unconditional respect for the imprescriptible rights of universal suffrage. The following is the fundamental formula of the system: Universal suffrage is the realization of the sovereignty of the people; it is the expression of that general will of which Rousseau speaks, which is and ought to be sovereign. If universal suffrage is the expression itself of sovereignty, it is, in a measure, above the law, since the law itself is only the emanation of the political sovereignty. The law is clearly the expression of a general will, which was that of the people at a given moment manifested by means of its representatives. But if the universal suffrage passes beyond that point, this simply proves that the law has ceased to be the expression of the

existing will of the people. The essence of will is to change and to suffer modifications. The former will, which has disappeared, cannot hold its own against the present will, provided it has received a regular expression. Now, the will of the people finds no more sincere, direct and regular expression than that which comes from the electoral body, since this only exists in view of the impossibility of applying the mechanism of universal suffrage to the formation of the laws, except by recourse to a system of representation.

It would seem, then, that one regularly elected by universal suffrage, having been designated by the organ itself of popular sovereignty, would be legally elected, even if he had been chosen in violation of a previous law. The popular will would have discarded the law since, being sovereign, it is free. Assuredly, even accepting this position, the argument could be answered by the assertion that it is not the will of an electoral college which is sovereign, but that of the whole people in the person of the active citizens, and the general will of which Rousseau speaks, is that which results from the votes of all the members of the community. It can never be manifested by the votes of one or several of the individual electoral colleges. For example, should two or more districts vote knowingly for the same candidate; this would not suffice to determine the general will of the nation, in favor of discarding a law previously passed by the Parliament, by neglecting, so far as this candidate is concerned, the law relating to multiple candidacies. While this argument is unimpeachable, it is insufficient, from the standpoint of the theory which we have just been discussing, to justify a restrictive law affecting universal suffrage, like that relating to the multiple candidacies. The reply would lose some of its force on the hypothesis, which is certainly a very improbable one, that the same candidate should be elected everywhere, but this is only a *reductio absurdum* having little importance here.

There is, however, a more serious phase of the subject.

The theorizers, who have just been referred to, freely recognize that the will of an electoral college is not sufficient to justify the discarding of a legal condition of eligibility, for its will is not identical with the general will, and is not an expression of the sovereignty of the people. But, it is urged, this sovereign will finds its incarnation in the body of the Deputies. Universal suffrage has designated this as the depositary of the sovereignty which belongs to it. If, then, the assembly chosen confirms the election, even an irregular one from the legal point of view, it is because the general will, which is sovereign, confirms the particular will of the electoral college which committed the irregularity. From this point of view the line of reasoning above regains all its force.*

It is, however, for the precise purpose of assuring the possibility of exercising the general and sovereign will in relation to individual elections, that the constitution vests in Parliament itself the absolute decision, without appeal, upon the validity of elections of its own members. In exercising these sovereign magisterial functions, the Parliament is judge not only of cases relating to electoral frauds, but of questions of eligibility, in other words, of the application to the case before them of laws which fix the conditions of eligibility. (See the Constitutional Law of July 16, 1875, Article X.) But it is necessary (and this is an alsolute essential of the system) that the decision in regard to all irregularities relating to the conditions of eligibility on the part of the candidate, whether it be a question of fundamental regulations, or simply of conditions attached to the exercise of candidacy, should be reserved in every case to the assembly itself, and that it should never be prejudiced, and, above all, never committed in advance by a prohibition of candidacy, and the destruction of votes cast. In preventing a candidate

*Cf. the quotations from a speech of M. Clemenceau before the Chamber of Deputies, on June 3, 1879, apropos of the election of Blanqui, to be found in Eugene Sierre's "*Traité de droit politique, électoral et parlementaire*," No. 363, p. 358 et seq. (Paris, 1893).

from standing for election, the administration sets itself in advance against possible manifestations of universal suffrage, and substitutes itself for the general will of the country by preventing the expression on the part of the latter of any opinion upon the regularity of the election, so far as the candidate himself is concerned.

In other words, upon this theory it is possible to justify the previous decision, either of the administration or of the courts, upon the conditions of exercising the right of suffrage, and in relation to the electorate as for example, the establishment in advance of electoral lists and the process of entering a complaint in regard to those who are included or of those who assert that they have a right to be included in the lists. For we have here the problem of determining the electoral body, and the organization of universal suffrage conformably to law. The reasoning above developed, in regard to the sovereignty of universal suffrage, obviously relates only to universal suffrage acting regularly. But so soon as universal suffrage regularly organized, shall become judge, either itself or through the representatives which it has chosen, of the regularity of its decisions, or rather of their conformity to the general will of the country—for this is after all the whole question in point—then every kind of anticipatory decision, and every previous sanction so far as candidacies are concerned, is an encroachment upon the rights of universal suffrage. On this theory it is not the principle of the law relating to multiple candidacies which forms a contradiction to the fundamental notions of the system, it is the previous sanction which this consecrates.

The law it is conceived might have forbidden multiple candidacies, but without giving the administration the right to interfere in advance, leaving to the assembly the function of declaring void such elections as might be in violation of this prohibition. But in practice this would not have been feasible, and would have courted the danger which it was desired to avoid, exposing the administration after a sort of popular

plebiscitum to a sort of parliamentary plebiscitum, which is a very different thing. For, where is the French Parliament, which would be in a position to declare invalid the election of a candidate who had been chosen in several districts? But, what it here is especially necessary to emphasize, is the complete setting aside of the theory of the sovereignty of universal suffrage, and the application of the opposite system which admits the possibility of legal restrictions, involving even a previous sanction for the manifestations of universal suffrage itself. This is the outcome, not of the principle of the law of 1889, but of the way in which its application has been made.

Now, it is well known that the adherents of the system of which the principle was rejected by the law of 1889 are precisely those who are tempted to attribute to the assemblies elected by the people, the sovereignty itself, which belongs to the nation. This system freely admits the idea of a constituent power distinct from the ordinary legislative power, an idea which was partially discarded, as we have seen, by the Constitution of 1875, and is constantly being farther restricted, even in the limited application which had been preserved, by a process of "*deconstitutionalizing*" of which the revisionary law of 1884 furnishes a striking example. All applications drawn from the idea of the social contract and of the sovereignty of the people, in the sense accepted by the radical school, tend to disappear in the political customs of the new French Republic. Moreover, it is obvious that the chief representatives of this school have secured the passage of a law which is the very negation of the principle of the sovereignty of universal suffrage. It is for the future understood that universal suffrage is subject to the law, and when it violates the law the Chamber will no longer be permitted in the verification of the credentials of its members to approve this. We find, then, an unconscious but very marked development which consists in consecrating the acts of parliament as a parliament, even when it acts in

no way as a constituent assembly and in asserting these rights above those of popular sovereignty understood in the sense of the radical school.

On the hypothesis of the earlier French school, an assembly is only an assembly of instructed agents who should not have any independent rights whatever and whose prerogatives should never be anything more than those provisionally delegated by the people. The English Parliament on the other hand is a corporation which has grown up by a long process of historical evolution, and which has acquired in this way rights which belong to it as such, in the same way as, in the old organization of France which was also the result of the same process of organic development, the *parlements* restricted, it is true, as judicial bodies, had acquired the rights which belonged to them as corporations, independently of any renewal of the privilege on the part of the royal power. We have to do here with rights which result from custom, and which even the organ of sovereignty itself must respect. Whether this be sovereignty as represented in the head of the state, or a popular sovereignty, it little matters.*

It would seem, then, conformable to this historical law of the formation of organized bodies, that the French Parliament during the short period which has elapsed since 1875, or we may say since 1871, if it be considered as the successor of the National Assembly of 1871, has formed itself into a well-established corporation, implanting itself firmly in the country. By the force of circumstances its authority has grown and it dictates laws to universal suffrage and commands as a master. It is no longer a simple assembly, existing only during the period for which powers have been delegated to it and deriving from this delegation alone its exclusive right to existence. It is now a permanent body, thanks to the permanence of the Senate, and now forms a firmly established historical personality. Owing its strength

* Cf. Lawrence Lowell, "Essays on Government," p. 196.

to the constitutional development in France since 1871, it has obtained in this way inherent rights to existence. We are approaching more and more closely, as is apparent, the type of organic constitutions, subject not only *de facto* but *de jure* as well, to the process of historical evolution. This is the result which we have reached above, and which everything tends to confirm.

PART III.

Continuing our consideration of this historical development, we next take up the modifications of the Constitution of 1875, in so far as they relate to the organization or rather to the composition of the Senate. This is really the most important phase of the innovations which have taken place in France since 1875. In all republican constitutions, the upper house, in so far as it performs the functions of a permanent senate, is the central nucleus of the whole political organization, and constitutes the permanent element of the entire structure. The head of the state has only temporary powers. The lower chamber is likewise elected only for a very limited period, as it is the manifestation of popular opinion at a given epoch. It is, moreover, re-elected as a whole, *i. e.*, renewed integrally since we may not modify the expression of the universal suffrage, and, consequently, the organ which represents the popular will can only be temporary in order to adapt itself to the transformations of this will. The upper chamber alone may perpetuate itself, and perpetuate with it traditions and unity of view. It maintains the spirit of continuity. It is the basis of the whole constitutional structure. Witness the characteristic rôle which the Roman Senate played, and which the American Senate has reproduced in this century in all its imposing grandeur. The most ardent opponents of the Senate are obliged to recognize its importance. Might it not happen that at a given moment all

the powers of government should fail? The Chamber might be dissolved; and the President might disappear in the crisis in which the ministry went to pieces. What would remain to represent the people, except the Senate? Nor is this hypothesis so chimerical as it might seem. Was there not something analogous to this in 1814, at the time when the Imperial Government was weakening and disappearing little by little, and before that of the Bourbons had been officially recognized and established? We all know the rôle which the Imperial Senate played or at least claimed for itself at this time.

There is then an inherent necessity in a republican constitution for a permanent, well-established senate. So far as France is concerned, should this disappear there would be an end to the theories which have been set forth above in regard to the rights of the parliament, even to its existence; for would a parliament still exist if it were but a single temporary assembly, disappearing altogether either at the expiration of the period for which it was elected, or under the stress of a dissolution? The same arguments are, however, advanced against this obviously salutary system by radical theorists, who construct constitutions as Siéyès did, as a geometrician constructs a theorem.

We have not in what precedes mentioned the arguments which are generally advanced by the advocates of the system of two chambers, such as the guarantee which this affords, of the careful drafting of laws; the check it furnished on thoughtless action; the recognition given in this way to the double current which shows itself necessarily in every society, representing on the one hand the traditional or conservative tendency, on the other the radical or progressive. These arguments are already well known.* They are, moreover, too manifestly in contradiction to the principles above alluded to not

* See Burgess "Political Science and Comparative Constitutional Law," Vol. ii, Cap. V, also the Introduction to the work of Henry Desplaces, "*Senats et chambres hautes*" (Paris, Hachette, 1893).

to meet the following well-known objection: The country, it is said, should govern through its representatives, for these representatives express the general will of the nation. This will is one, and can not be doubled; hence it implies a single organ. In order that it may approximate as nearly as possible the true will of the country which it represents, it must be sought in a single assembly, elected directly by the people. Hence, every government based upon the principle of the sovereignty of the people, can admit only a single chamber, nominated by direct universal suffrage. Here we have a regular demonstration, and for a long time past those who reason in this way, have demanded the abolition of the Senate in France. *

In 1875, not only was there a Senate, but a Senate curiously constituted. All the members had not the same origin. While the greater part—three-quarters—were elected by a sort of suffrage in the second degree, the remainder, seventy-five in number, had been chosen by the National Assembly, as life members who could not be removed and who should, as vacancies occurred, continue to be chosen by the Senate itself and retain the same qualities of permanence. This duality was the result of a compromise, the history of which we need not take up here. This distinction might be defended. In the drafts submitted by the right wing, certain senators were admitted by right in view of their functions. This class having disappeared,† it might be a subject of regret that certain high administrative officials had not the right to a seat in the Senate. Moreover, there are men, those usually who have raised themselves to high positions, who are repelled by the concessions and the violence inherent in electoral contests. Their place is in the Senate. We might then suppose that the Senate would select those persons whose services would be so valuable in

* Cf. "*Souvenirs de Alexis de Tocqueville*" (Paris, 1893, p. 268, et seq.) for an interesting account of the discussion which took place in 1848 in the committee on the constitution with regard to this question of two chambers.

† For the history of the organization of the Senate, see Lefebvre *op. cit.*, p. 38.

a high assembly, and who would scarcely ever obtain a seat through direct election. Moreover, since they are looked upon as having been chosen on account of their personal qualities, and independently of any delegation on the part of universal suffrage, it would be but natural that they should retain their seats for life. But since the amendment of 1884 this method of reasoning is no longer accepted, and the class of life members has been irrevocably condemned. Here, then, is the first reproach which has been cast upon the Senate of 1875.

A second reproach has been made in regard to the distribution of seats in the Senate, since these were very far from being proportionately distributed according to the population of the departments. Thus, le Nord and la Seine had three senators while the greater part of the departments had two. Now, many of the latter have not one-tenth of the population of le Nord and la Seine. Taking population as a basis, le Nord and la Seine ought to have had a representation in the Senate ten times more numerous than the great majority of the departments, that is to say, twenty seats at least. This would, however, in practice have given us a too numerous Senate, which was out of the question. It might be urged, however, as was done by the authors of the American Constitution, that the upper house should represent something other than individual interests, namely, those of large political or administrative districts. The French Senate of 1875 might be considered as representing departments in a way, and thus justify the approximate uniformity in the distribution of seats. Obviously, this position would be difficult to defend owing to the fact that the system is not carried out in a rigorously logical manner, for this would involve absolute equality among the departments, while as a matter of fact the equality is only approximate.

Lastly, some reform appeared indispensable in the composition of the electoral body. The senators, as is well known, are elected by electors, chosen by universal suffrage, in a

department. The list of electors includes the deputies, councillors general and councillors of the arrondissement in the department. Logically, all the municipal councillors of all the communes in the department ought to be included, but this last would be absolutely impossible both on grounds of expediency and justice. For in practice such a general disturbance would be impossible, and political justice would preclude the members of the political assemblies of the departments from being submerged to such an extent in the mass of rural representatives. This result was avoided by giving only a single delegate to the municipal councils, whatever might be the importance of the commune. This equality, absolute in this instance so far as the delegation of the commune is concerned, cannot be defended. Although Gambetta addressed the Senate as the "Great Council of the Communes of France," it is not correct to maintain that the Senate represents the interest of the communes exclusively, since the elections take place at the chief town of the department from collective lists representing the whole of the department. Moreover, since all the municipal councillors were not included in the formation of the electoral college, the delegates of the rural communes enjoyed a very large majority over the representatives of the city element, since each town, whatever might be its importance, had but a single delegate, neither more nor less than the smallest commune of the department. The election was, in short, in the hands of the rural population. Hence, for a long time, it was felt that a change was necessary.

The provisions relative to the distinction between the two categories of members, to the distribution of seats, and the formation of the electoral colleges, had found a place in the Constitutional Laws, namely, in that of the twenty-fourth of February, 1875, (Articles 1-7) and, consequently, these could not be changed except by a revisionary assembly. The revision took place August 14, 1884, and, as has already been said, the law amending the constitution contented

itself with depriving these Articles, 1-7, of their constitutional character, in order to leave the reorganization to take the form of an ordinary law passed by the chambers. The real explanation of this mode of procedure was the suspicious attitude, especially on the part of the Senate, towards the majority, as it was constituted in the National Assembly. There a majority, necessarily, belonged to the Chamber of Deputies by reason of its numerical superiority. The National Assembly is, like every unitary assembly, very prone to hasty legislation, and it was then felt that the proposed reform should be carefully considered and weighed, and subjected to the guarantees furnished by the system of two chambers, that is by the ordinary procedure.

The moderate party wished, in short, to escape at any price the danger which threatened it of a Senate elected directly by universal suffrage.* For it is obvious that where there are two chambers, both having the same origin, one of them could have no reason for existence, and should, consequently, disappear. The Senate suggested would differ from the Chamber of Deputies in no way except in the system of vacating the seats in rotation, and possibly by certain conditions imposed in the matter of age. This latter distinction would, however, have little importance. As to the system of partial renewal of the Senate, if it should take place at the same time as the election of the entire Chamber of Deputies, and if the majority should be found to be different in the two assemblies, this could be attributed only to that portion of the Senate which had not been re-elected, which would thus no longer find itself in conformity with the existing ideas represented by universal suffrage. If we have, however, two chambers which both represent universal suffrage, the entire influence ought, necessarily, to be ascribed to that one which represents as a whole the existing will of the country. The Senate, therefore, would be nothing more than a fifth wheel of which no farther account

* See Pyfferoen, "*Du Senat en France et dans les Pays Bas*," p. 16 et seq.

would be taken. Should, on the other hand, the partial re-election of the Senate not coincide with the election of the Chamber, and if it should be discovered on a new senatorial election that the majority had changed, it would be this body which represented the existing ideas of the country. The Senate would, in this case, annihilate the Chamber of Deputies by reason of the authority of the new popular mandate. Thus, one of the chambers would in turn destroy the other morally, until at last one of them disappeared altogether.

It is not necessary to review here all the plans, counter-plans and amendments presented to the Chamber at the time of the senatorial reform. The history of this has been given in a very complete and very exact fashion by Professor Currier in the notice to which allusion has already been made. It will suffice to note the results, and especially the innovations introduced by the law of December 9, 1884. These may be arranged under four headings.

First, the life memberships were abolished for the future without, however, suppressing the already existing ones, so that the senators belonging to this class at the time the law was passed in 1884, were to keep their seats for life. But, as vacancies occurred among the life senators, their places were to be filled by persons elected no longer by the Senate, but in the manner prescribed for the other members and for the same period.

Secondly. A new distribution of seats was implied, owing to the necessity of distributing among the departments the seats formerly occupied by the life members. It is well known that the distribution of the departmental senators, as it had been arranged by the Constitution of 1875, had given rise to active protests on the ground of its injustice. It would have been possible in the new distribution to have apportioned the entire three hundred senators among the departments (since all the senators were hereafter to be elected in the departments) according to the population. This would have involved a radical change and was not accepted. The Assembly

contented itself with simply distributing the seventy-five seats of the life senators, taking into consideration the population of the departments, with a view of correcting, so far as possible, the more obvious discrepancies of the earlier system. Paris which had had but five seats, now had ten; le Nord, eight. An additional senator was given to the majority of departments which had had but two, so that most of the departments to-day have three senators; although some still have only two.

Thirdly. The electoral body provided for the choice of the senators was given a broader basis. When the system of election by universal suffrage had been rejected, there was nothing to be done except to introduce a system of proportional distribution in the case of the municipal delegates, instead of the equality established in 1875. Gambetta, in his plan for constitutional amendment, had proposed a system of this kind, involving an exactly proportional distribution. The government, however, in 1884 took a very different view of the matter. The proportional system would have given a considerable number of delegates to the large towns, so that in certain departments the election would have been in the hands of the delegates of one or two of the great cities; and the influence of the councillors general, and the councillors of the arrondissement would have been very much decreased, as well as that of the delegates of the smaller towns. In other departments the election would, on the contrary, have been, as in the past, in the hands of the rural delegates. A law establishing the proportional system would have produced, from a political standpoint, very various and very fortuitous results. The government, at that time, had an entirely different aim, which was to insure the predominance to the towns of moderate size. It was at bottom purely and simply a party manœuvre, since the towns of medium size were, in the main, friendly to the party in power in 1884. As for the larger cities, where in general there is a predominance of the industrial element, the government was

apprehensive of their influence. They were suspicious too of the rural communities, upon very different grounds, however. In short, the towns of from five to ten thousand inhabitants were those which the government of 1884 had in mind, and a method was found for securing them a preponderating influence.

A progressive system was invented, based, approximately at least, upon the number of municipal councillors. Now, on the one hand, the number of municipal councillors was not exactly proportional to the population; on the other hand, the system of progression, determined upon in fixing the number of delegates, is very far from being absolutely proportional to the number of those officers. It is a most arbitrary system, based upon no single principle. One delegate is given to ten members; two to municipal councils having twelve members; three to those having sixteen; six to those having twenty-one, etc. Councils having thirty members have fifteen delegates; those having thirty-six have twenty-four; finally, Paris has thirty delegates. This, then, is the outcome of the system.* Communes having from fifteen hundred to twenty-five hundred inhabitants, for example, have sixteen councillors; they are given three delegates. Communes having from twenty-five hundred and one to thirty-five hundred inhabitants have twenty-one councillors, and are entitled to six delegates. A commune of three thousand inhabitants has exactly double the number of delegates that a commune of twenty-five hundred has. Complaints were made before 1884 that the interest of the large towns was sacrificed. Paris, for example, only had one delegate, and found itself confronted with ninety-six delegates from the neighboring communes. It is true that in order to insure the influence of Paris in the electoral body, twenty-seven deputies and eighty councillors general who represented this city were added, this making in all one hundred Parisian

*See "*Manuel de droit constitutionel*" by Saint-Girons. Second edition and appendix, p. 657.

electors, as against ninety-six from the surrounding districts. A similar contention might be made in favor of other large cities. We have a mongrel system here which rests upon no principle, and what is worse will demand sooner or later a new revision of the constitution, which may result in the acceptance of universal suffrage in the absence of any other satisfactory solution. In this lies a very real danger.

Fourthly. The law of 1884 modified the previous conditions of eligibility. It was in fact one of the most remarkable characteristics of the Senate as constituted in 1875, that the principle followed in this respect was exactly the opposite of that adopted for the Chamber of Deputies. In the latter officials were declared ineligible, except in the cases mentioned in the law.* On the contrary, in the organic law relating to the election of senators (Law of August 2, 1875), we find no such clause, only certain functions are enumerated as incompatible with the position of senator, proceeding thus by enumerating limitations. Hence, eligibility in this case is accepted as the rule, precisely the opposite method to that established in the case of the Chamber of Deputies. Moreover, in the Senate, as organized in 1875, we find no instances of absolute ineligibility, but simply certain cases of relative ineligibility. That is to say, an official cannot be elected in the district in which he performs his functions, but this does not prevent him from offering himself for election elsewhere. Military persons in active service even are not declared ineligible. In principle, then, there is no condition of ineligibility based upon office, and no incompatibility between public functions and the position of senator, except those instances enumerated in the law. The difference which exists between ineligibility and incompatibility should be noted. In the case of ineligibility the election is void and must be declared so. In the case of incompatibility the election remains legal but the individual elected must choose between the position

* Organic Law of November 30, 1875. Articles VIII, IX, XI, XII.

which he occupies or to which he may be elected later, and his position in the Senate.

This was the system adopted in regard to officials, for the Senate of 1875. The aim was to obstruct as little as possible the admission of officials to that body. All this is attributable to the idea which led to the creation of a class of senators elected by the Senate. This body was regarded as destined to embrace such high personages as it might desire to summon into its midst, and who need not consequently rely for election upon the ordinary electoral body. Hence, since the Senate was to be the assemblage of men of all capacities, it was but natural to include certain high functionaries, capable of enlightening that body by reason of their knowledge or abilities. This idea was entirely changed in 1884. A Senate accessible, in a measure by right, to those of the greatest capabilities and to certain high functionaries was considered a body of aristocratic tendencies or at least as likely to suffer from the influence of the government. It was wished to reform all this, hence the suppression of the class reserved for election by the Senate, and the change in the system so far as it related to government officials, and to incompatibility of office.

In 1884, no conclusion was reached on the subject of incompatible positions, but an ineligible class was created, namely, the military. Military persons are declared ineligible, except marshals, admirals and certain staff officers. It was proposed to make an exception in the case of the division generals, at least for the former ministers of war. For all such suggestions, the government had a ready reply; they would be incompatible with discipline. No soldier, it was said, should accept a position which puts him in the situation to criticise the acts of the government. It would not seem, however, that the discipline had suffered much by the presence of certain officers of a superior grade in the Senate before 1884, and in any case it is to be regretted that we can not have in either of the chambers professional men for the discussion of technical questions.

As regards incompatible offices, the Senate passed on the eighteenth of December, 1884, a general bill relating to the incompatibility of office, so far as this was connected with the legislative bodies, and applicable, consequently, to both chambers. The principle of the equality of the two chambers was thus taken for granted, that is to say, the difference in conception between the two chambers, which existed in 1875, was disregarded. The same reasons which required that an office should be declared incompatible with the position of Deputy should apply equally, it was said, to the position of Senator. This bill of December 18, 1884, takes as its starting point the principle enunciated in Articles VII, IX, and XI of the law of November 30, 1875, relating to the election of deputies, providing that the exercise of public functions paid for from the state treasury, is incompatible with a seat in the legislative bodies. The bill enumerates certain exceptions, and contains, moreover, certain important clauses relating to deputies and senators who associate themselves with a society or financial company having in charge public works for the state, and also to deputies and senators who allow financial companies to make use of their names in strengthening their credit. This bill, however, has not as yet become a law. As a transitory measure, it was decided to pass a law (December 26, 1887) which, so far as this matter of incompatibility is concerned, puts the Senate on the same footing as the Chamber of Deputies.

Finally it was necessary to supplement the body of the laws relating to the Senate, passed previously to 1875, by a law (passed August 10, 1889) regulating the procedure to be followed in the Senate when sitting as a high court of justice. This law was simply mentioned in a note, without being translated in Professor Currier's edition of the Constitutional Laws. It, however, fulfilled a promise made by the constitution itself. Article XII of the law of July 16, 1875, provides that a law shall be passed to determine the mode of procedure in the accusation, trial and judgment of cases

coming before the Senate as a court of justice. This forms a part of that group of measures which were passed somewhat precipitately during the period of excitement over Boulanger. All the Constitutional Laws, bearing this same date of 1889, bear the same mark. They are all "*lois de circonstance.*" It is not necessary, however, to expatiate upon these details of procedure, or upon the jurisdiction and functions of the Senate acting as a court of justice, inasmuch as this has only a very secondary importance in the subject which engages us here.*

It is important to determine if possible, to what extent the power of resistance and the authority of the Senate has been increased by its conduct during the excitement over Boulanger. It showed an energy at that time equal, at least, to that exhibited by the Chamber of Deputies, in defending the constitution against the violence which was directed against it, and this has brought with it a gain in confidence and popularity.† No doubt, at every indication of friction with the Chamber of Deputies (and it is above all in regard to the budget that difficulties present themselves, almost periodically) there are always some who cry out against "the Versailles Constitution handed down by the Monarchical Convention of 1875." But, it would seem as if the younger political generation was less affected by this protest of the radicals, which has become somewhat archaic, and rests upon principles, almost metaphysical in their nature, which social science has brought to light, and which a certain very laudable dilettanteism hinders from developing into articles of political faith among the newer generation. The older radical theories meet, therefore, with a less cordial reception. The Senate, moreover, has gained a greater importance in the eyes of the republican party, and has, since 1889, dissipated many suspicions.

* This subject is treated in Felix Moreau's excellent "*Précis élémentaire de droit constitutionnel*," Paris, 1892, p. 305 et seq.

† Cf. Henry Desplaces' "*Senats et hautes cours*," p. 608.

While the number of its adversaries diminishes from day to day, there is a general feeling that the Senate ought to be elected by universal suffrage. Yet it is difficult to see what the adversaries of the Senate can gain by this, for it is very certain, as M. Léon Say said at the time of the revision in 1884, that this would be the only way of giving the Senate an authority, which, in view of its permanence, would ordinarily relegate the Chamber of Deputies to a subordinate position. Far from tending to diminish possible conflicts, the election of the Senate by universal suffrage would only render them more bitter, since the two chambers, both relying upon the authority of the same electoral body, would neither of them willingly give way. This would be a long step toward assimilating the Senate with the Chamber of Deputies, and this assimilation would become complete if it were determined, as some would have it, that the Chamber should be re-elected in rotation instead of on the present system. If these two reforms should ever take place, and there should be in France a Senate elected by universal suffrage, and a Chamber whose members were re-elected in rotation, it is very certain that there would be nothing left except to suppress one of the two bodies, for one of them would certainly be superfluous.

It is quite possible that the establishment of the system of partial re-election, in the case of the Chamber of Deputies, is one of the means by which those who favor it hope to insure the Senate against any attempt hereafter to introduce universal suffrage. However this may be, nothing justifies us in anticipating that the existing tendencies will hasten the disappearance of the bi-cameral system. The experience we have had with a single chamber, in the case of the later meetings of the National Assembly, has only proved the futility of a double vote and of a discussion by each body separately.

Nothing would indicate that a fundamental modification in the constitution of the Parliament is probable unless

perhaps certain customary changes, as, for example, the substitution of general tickets for the district system; which means very little in France, inasmuch as the pendulum swings regularly back and forth. We may not even hope for an attempt to introduce proportional representation, at least so far as it relates to the election to the Parliament. For should this reform be adopted, it will be applied in the first instance to the municipal elections.

In other words, it would seem as if the present organization of the French Parliament was, in its main features, assured for a long time to come. Moreover, many anxious for revision, who, under pretence of an amendment to the constitution, have the Senate especially in mind, seem to take very little account of the rôle which an upper chamber should play under a parliamentary régime, especially its action as regarded from a political standpoint. They consider it as simply a chamber of resistance, and ascribe to it the failure of all the reforms undertaken by the radical party, some of which certainly should demand the attention of Parliament. For, even if we may contest the value of the actions of the radical party, it cannot be denied that this is practically the only one in France, among the various factions of the republican party, who bring up questions, formulate programs, and undertake social reforms. There is, for example, scarcely any other faction except those belonging distinctly to the opposition, which dares to denounce the proposed annihilation of all government. Their assertions, however, contain much that is misleading.

The Senate has never hindered any measure when there was a strong government which made its authority felt, just as the House of Lords has never placed any obstacle in the way of democratic development in England. The upper house, under a parliamentary system, has scarcely more than a mission of control, so far as the general political direction properly so-called and the legislation associated with this are concerned. If we may speak of resistance at all,

we can only refer to momentary resistance.* The Senate exercises, in reality, that famous suspensive veto which the head of the state, under a parliamentary system, can no longer make use of.† Its real mission is to serve as an organ for the opposition of public opinion against the hasty action of the lower chamber. Every parliamentary assembly is, at a given moment, dominated by personal and factional interests. The tyranny of suggested reforms takes possession of it so soon as the program is sketched out, and in the way to be realized, and frequently carries it beyond the wishes of public opinion. It must have some check, and this is the purpose of the Senate. In view of this, the King of Belgium has demanded a referendum. But before undertaking to settle the conflict directly by the people, a more reliable arbitrator may be called in, namely, the upper house. Its rôle is to sustain the government, when this finds itself face to face with a chamber which would subject it to its wishes. But, on the other hand, everybody agrees, and there is an abundance of facts to establish the truth of this assertion, that with a strong government, backed up by a solid majority, no prolonged resistance on the part of the upper chamber is possible. The suppression, therefore, of the Senate would not lend that force to the government, the absence of which the radical party in France deplores. The Senate will always be practically the tool of the government; the whole question being to get a government. There, in truth, is the burning question in the future of the French Constitution, and upon this point a few observations remain to be made. We have seen what the French Parliament is, we must now consider its authority in general, especially in relation to the executive power.

*Cf. Laveleye "*Le Gouvernement dans la Democratie*," Vol. ii, p. 16.

†Cf. Van den Heuvel, "*Lettre sur le Referendum en Belgique*," in Deploige "*Le Referendum en Suisse*," also the same author's "*De la Rêvision de la Constitution Belge*," p. 135. Cf. too, Felix de Breux "*Questions constitutionnels et sociales*," Bruxelles 1893, p. 73 et seq.

PART IV.

In what precedes, there is mention of scarcely anything except the external modifications of the constitution, that is to say, those changes which have taken the form of alterations in the law. The most profound modifications in the government of a country, however, are the internal ones which show themselves in the great currents of public opinion, ready at a given moment, to give to public policy, and, consequently, to the working of the constitution an absolutely new and unexpected direction. Such currents are, in general, of two kinds. There are those which have their origin in political parties, and which show themselves most frequently in the opposition party. These are generally only simple tendencies, and constitute hardly more than a state of mind. It would be dangerous therefore to attribute to these, before they reach a point where they could take the form of positive laws, any part in the normal play of the constitutional machinery. But there are other currents. In the first place, those which result from the manner in which the constitution is applied by those to whom its care is entrusted —political bodies, assemblies and the government. It goes without saying that this constitutional practice forms a part of the description and study of the constitution itself. It gives a legal definiteness to rules which are habitually applied and transform these into acquired rights. There are other currents which, while they do not originate with those who share in administering the constitution, have, nevertheless, developed from a condition where they formed simple political formulæ into accepted customs, becoming a part, consequently, of the national consciousness. This class of conceptions finally becomes sufficiently definite to develop into judicial ideas. They are, so to speak, rights existing in a latent state which at the first opportunity will assuredly appear as positive rights. Such currents affect the constitution, inasmuch as this includes not only the legal and

written envelope, which makes it a purely judicial phenomenon; but includes the whole social structure of the country as well. *

It remains then, in our study of the constitutional evolution of the third French Republic, to take up from this double point of view, the tendencies which have become apparent, leaving aside everything which is only a simple manifestation of political opinion. The subject can obviously be treated only in a very broad way.

A first point which is recognized by every one, is the constantly growing authority of the Parliament; especially the preponderating influence of the Chamber of Deputies, and the consequently more and more subordinate position of the ministries. The head of the cabinet no longer gives any definite direction to the governmental policy; he drives before the wind. He is not at the head of a majority which is capable of following him; but is the timid servant of this majority, when it exists, or is most frequently obliged, since no such majority does exist, to concoct in advance some kind of coalition upon which the fate of the ministry may rest. He must, consequently, adopt a line of conduct, whatever it may be, which shall serve as a rallying point for the more or less hybrid grouping which may constitute the majority for the time being. If the prerogatives of government are thus practically non-existent in its immediate representatives, they are even more completely foreign to the position of the President. There is, consequently, a stronger and stronger tendency toward a condition in which the Parliament will control all the powers of government. While the same phenomenon is perceptible in England since the extension of the right of suffrage, in France this tendency is characteristic of an entirely different school, that which maintains the Jacobin tradition, and is favorable to single and

* For these points see Tiedeman's suggestive work on "The Unwritten Constitution of the United States" (*passim*).

sovereign legislative assemblies.* Their principal dogma is that the assembly of representatives of the people forms the depository of popular sovereignty, and that this is consequently an authority before which all should give way. It is evidently to this school to which those belong in France who are constantly talking of the respect due to universal suffrage, and who regard in this light the absolute sovereignty of those chosen by that suffrage. Not only is this held to be true of the representatives as a body, but even of individual members. A deputy entering one of the ministries sometimes appears to regard himself as the embodiment of universal suffrage itself, giving orders on its part, and deciding for it in the selection of the government officials. We discover a deputy of this class involved in a street brawl. Universal suffrage, one would infer, was manifesting its sovereignty in his person, and forcing everyone, the authorities above all, to give way before its inviolability. These traditions which have become classical in France, have certainly served to increase the authority of the Parliament. It is not, however, at all certain (and this is a symptom upon which we cannot congratulate ourselves too heartily), that this conception of a sovereign body, as the depository of popular sovereignty itself, is the one which is gaining ground, and which serves as a foundation for the rights of Parliament in the preponderating opinion which is gradually forming on this point.

In the first place the existence of a second chamber remains a terrible obstacle to this conception of a body which is the sovereign depository of the popular will. This depository cannot be imagined as divided since will is one in its nature. Now, as we have observed above, any disposition to return to the system of a single chamber seems out of the question. There is no serious tendency perceptible in France in favor

* The only attempt to set forth the advantages and the dangers of the parliamentary system as it exists on the Continent is to be found in Laveleye's "*Le Gouvernement dans la Dêmocratie*," Vol. ii, p. 93 et seq. See also Burgess *op. cit.*, Vol. ii, p. 13 et seq.

of a change of this kind, and the number of those who favor such a system are, as a matter of fact, growing less and less. Having admitted this, it may be accepted that all which the faction in favor of a single legislative body has lost, is a loss at the same time for those retaining the conception of a sovereign legislative body which shall be the depository of the absolute political sovereignty. If the Parliament finds its influence, as well as its powers, increasing it is because it has assumed an authority for itself which belongs to it, as an organic body, the manifestations of which very soon become acquired rights. The French Parliament is becoming a corporation which is gaining a hold on the country; whose influence is increasing, and whose rights and powers are enlarged in proportion to its activity in extending its domination. But like every political corporation, as, for example, the Parliament of England, however great and extended its rights and powers, this powerful body never has anything except rights and powers; it does not embody in itself right and power, it is one of the organs of sovereignty, and not sovereignty itself.

What has become of the presidential powers and functions in the face of this somewhat aggressive body? The political authority of the President of the Republic has been formally more and more diminished, whatever may be the personal influence which, from several points of view, M. Carnot so happily exercised. In this respect some of the most important tendencies have shown themselves during the different crises which return periodically. The phenomena of Boulangisme has no other explanation than the need of a strong power and a will on the part of the government. In no other way can it be explained why so many good, and even serious people, without speaking of absolutely sincere republicans who never dreamed of any kind of coup d'etat, allowed themselves to be drawn into the movement. A great many to-day, and this was obvious enough after the scandals of the Panama Canal, still demand

a revision of the constitution with no other aim than to insure the powers of the President of the Republic, and to find a remedy for the excess of the parliamentary power which, ill applied, degenerates into a system of general subjection.

The parliamentary system, as it is modified in France by the minute division of parties, results in a minute division of will, and the absence of any political direction. The form of the laws passed during several years is, when looked at from the standpoint of legislative technique, most deplorable.* This is most striking in a country which was renowned, and with good reason, for the perfection and superiority of its legislative monuments. Not only are the laws badly drawn up by reason of a want of sufficient preparation. There is an absence of guidance, and the existence of a system of amendment which introduces mere experimentation in the place of clear ideas and well-rounded conceptions. No progress is, moreover, to be anticipated where no determining will is present. This is a social law which is inexorable. To advance is the act of a master-spirit, of a bold and persevering will; not of a group where the courage and confidence of any single representative, will be met by at least ten adversaries. All this is shown by experience.

France which, on account of its political experiments, has always been regarded as taking the lead, and has even carried consternation into the rest of Europe on this account, is now the most conservative, some might say the most backward, of countries, so far as economic, industrial and social reform is concerned. It has a Parliament which wears itself out with trifling quarrels over domestic politics, and which has no leader to guide it in serious progress. In order to combat prejudices, vanquish routine, to make way against intoleration of all kind, a will is necessary, a will which directs and which resists every discouragement. All

*The passage of bills is sadly interrupted by successive interpolations and by the periodic re-election of members of the Chamber of Deputies. This has been urged by those who advocate retirement of the deputies by classes as in the case of the Senate of the United States.

the acts which have left a mark in the world for good or evil, emanate from a single thought, and it is very exceptional that this unity of thought is to be found in a group of men, except in the case of the gratification of personal passions. But leaving to one side acts which are the result of passion, in order to continue our consideration of those due to reason, we cannot fail to note this infinite subdivision of will, the obstacles of all sorts which present themselves against every bold proposition, and above all the force of reaction which shows itself at the first failure of a measure which is given a trial. Take only one example, let us imagine the curia, launching an encyclical against the workmen. It is very obvious that with the introduction of a parliamentary system in the supreme direction of the Roman Church, all the significant acts of the Pontificate of Leo XIII. would necessarily have been wanting. Not because these were the exclusive acts of one man or of a single thought, for they really illustrate a new tendency of thought which found its representatives in the American and English prelates. He, however, who undertook to make himself its organ, acted by reason of a single will which nothing could impede and nothing discourage.

This effort for unity is a law of all government; the point toward which, by a species of unavoidable social law, every political organization tends when left to itself. This same law is perceptible, not only in the case of personal governments, confided to a single and all-powerful head of the state, but even in the case of elected governments where a single powerful party becomes absolute. We commence by destroying the duality of the legislative organs in order to reach a unitary system, and from the single assembly a committee of government proceeds which dominates the assembly and finally, from this committee, a man who assumes the supreme rôle. This is the history of the Convention of 1792-95. It is the origin, moreover, and the object, of all the efforts directed toward a revision of the constitution

which have shown themselves in France during the last few years. There are on the one hand, the partisans of a personal government, who would like to see a single man, invested by popular delegation, with the plenitude of power. On the other hand, we have the partisans of the radical régime, who wish to realize this unity and despotism by the natural play of the collective government, by means of a single assembly which shall send out through successive selections, on the principle suggested by Siéyès, at the time of the drawing up of the constitution of the year eight, * all the organs of power, until we reach the supreme despot, who from his exalted station, tyrannizes over all. However this may be, it is certain from the standpoint of history, that every military undertaking of a serious nature, which brings into prominence a really ambitious commander, if it terminates by marked success upon the fields of battle, may put France at the mercy of the victorious general. The need of a governmental will is then the most obvious result of the approved action of the Constitution of 1875. This necessity has been exploited by all the important parties, whether ranked among the factions of the right or of the left. But the question suggests itself, is this unity in political affairs, this will in the action of the government, which makes the exercise of governmental power with firmness and independence possible, incompatible with the parliamentary régime which is the only guarantee which has been so far found against the despotism whether of a single man or of a political group?

Some still believe that the solution is to be found in a return to monarchy. They think that a king, by reason of the principle of heredity, his power being based upon no party and having no re-election to meet, would have a far different kind of authority from that of the president of a Republic, who is only a temporary magistrate, who is necessarily a party-man, and who has no right to forget this fact.

*Cf. Taine's remarkable chapter "*Le Régime moderne.*" Vol. i, bk. iv, Cap. I.

They think that a monarchy might serve as a solid basis upon which modern democracy could count for the realization of the social progress which the parliamentary system by itself would seem to refuse to them and which it seems impossible to realize. The French monarchy, in continuing its rôle, would but continue the traditions of past centuries. For it is certain in France, at least, that without the aid of royalty, somewhat interested aid to be sure, the Third Estate would not have been constituted into a body so completely organized as it has been. It is also true that in order to gain a social organization it sacrificed its political organization, being in this respect too completely dominated by its too-powerful ally. This does not matter, however. These traditions of popular emancipation form part of the historical stock in trade of French royalty.

On many accounts we may draw attention to a book of M. Vacherot* which has been too much neglected. This is doubtless attributable to the fact that those belonging to the monarchical party have scarcely taken the trouble to inform themselves in this matter. They have made very little effort to draw up a plan of action for social reform, confining themselves, as they do, to personal invective. This group is chiefly composed, in fact, of the victims of the republican policy. A party which is based upon accumulated grievances, however just these may be, is, nevertheless, condemned to impotence by this fact. The idea of reprisal has never been a principle in the guidance of political affairs; although it may serve as an inspiration at certain times.

Politics seems most rebellious to the influence of sentiment and imagination, and yet the only political action which has ever made way for itself in the world is that which appeals to the instincts of generosity of human nature, even if it only promises castles in the air. Utopian fancies, or perhaps simply a certain air of novelty, have always been the means

* Vacherot, "*La démocratie liberale*," Paris, 1892. Cf. Felix de Breux, "*Questions constitutionelles et sociales*," p. 94, et. seq.

through which political action gained its end, and without these it could never have succeeded. Was it not Disraeli who gave to the English Tory party this renewal of sympathy for the people, the lack of which threatened to make the English parliamentary system what this great man himself called in one of his romances, "A new Venetian Constitution?" Hopeless of producing any results through the old means adopted by his party, he called to his aid this new generation of which he wished to be the prophet. But where is the new generation of the Conservative French party, and especially of the Monarchical party? Does any one imagine that the repeated recriminations of the Conservative opposition will create this? To live and create is to act; to complain is the opposite of action, and is for a political party inertia and death.

But the character of the adherents of the Monarchical party is not the only thing which excites distrust, when we consider the hopes that might be based upon a new tendency in favor of social progress. The fate of the existing monarchies is only too obvious, condemned, as they are, to defend themselves against any suggestion of personal power. The excess of authority which the principle of heredity has granted them, is necessarily compensated for by irresponsibility, but the moment that the prince becomes irresponsible he inevitably becomes impotent—since on inactivity and political inertia depends his very existence, in face of threatening revolution. Consequently, the modern monarchy can only be parliamentary and the parliamentary monarchy will, more and more surely, result in the complete annihilation of the chief executive by the Parliament. This the Count of Chambord understood better than anyone else, when, in 1873, he refused to submit to the concessions demanded of him.

Hence, leaving all questions of historical origin and of partisan politics to one side, it is not royalty from which we may expect the restoration in France of a strong and salutary

governmental will. By the very fact of the existence of a king, there would be one more obstacle in the way of relying upon the head of the state for that will-power which is necessary to the government, and in relation to which the Parliament should serve as a controlling and not as a despotic force. It may be added, moreover, that the restoration of royalty would prolong in France the system of constitutional opposition, by rallying all the opposition around the republican standard, and, yet for a century, this has been the constitutional defect which has embarrassed France and which has placed obstacles in the way of progress and liberty. Where political parties struggle no longer for ideas, but for revolution, no farther progress is possible; we find only personal conflict and political revenge. Consequently, it may be said, that for some time the old conservative Monarchical party has been losing ground. It has not confidence even in its own forces. Many Catholics have, in this respect, recovered their liberty, thanks to the noble dictum which issued from the Vatican, a liberty for which they sighed.

Many unselfish men who love liberty, and who love the people, who still believe in the political and social future of this noble country of France, are endeavoring to find a new policy which may prepare the way for social evolution without compromising the dictates of justice, and without destroying the principle of liberty. They do not look for means to this end in the re-establishment of royalty, nor can they count upon the parliamentary system as it has shown itself in France during the past fifteen years. Is there then no other resource than the hazard of a popular revision of the constitution which, while maintaining the republic, would give us a president elected by universal suffrage? This, as everyone knows, would put an end to the parliamentary régime, since the authority derived from universal suffrage is incompatible with the irresponsibility of the person elected. The best proof of this is to be found in 1870, when the empire, wishing to introduce the parliamentary system

into the constitution, could not destroy the responsibility of the head of the state. But a republic, governed by a popular head, would obviously be no longer a parliamentary republic. It is even a question whether it would be a republic at all very long, but this might possibly be, should we adopt the system of very short term for the president, as in America, and if a beginning should be made with a very weak president, without any farther personal ambitions. But these two conditions, thanks to historical precedents and the memories which these have left in France, are altogether chimerical, so that a re-organization of the government by a plebiscitum would result, in a prætorian empire, with a succession of more or less dictatorial individuals and a perpetual tendency toward revolution among the people, or in the army, for or against such and such rival leaders. This is the system found in all periods of decadence and among peoples who can no longer govern themselves. Nothing however in the evolution of the present constitution shows us any legal tendency toward such a transformation. There are no doubt advocates of such a change, but no institutional evolution toward a dictatorial system is perceptible.

If we scrutinize the actual development of the present constitution and, consequently, the tendencies shown in the evolution of the parliamentary system, it may perhaps be possible to distinguish certain conceptions in the process of formation, which may furnish a premonition of a modification in the French parliamentary system, a modification toward which all legitimate desires and energies should be directed. Since we need no longer anticipate a coup d'etat, but a legal re-organization, it is the duty of scientific men, hopefully to give to scattered ideas a form which shall convert them into principles, circulating as the coin of the realm —principles to which governmental action and existing institutions should hereafter adjust themselves. We need not despair of seeing a new generation arise in France under the present constitution, and without any other reform of

customs and ideas than one analogous to that which Disraeli initiated and developed in England.

The belief that Parliament can govern is falling more and more into discredit by reason of the inability which it has shown to govern in the past. Nevertheless, we are thankful to say that the period of conflict, so far as the question of the constitution is concerned, appears to be closing. Even in the case of the republican party it seems apparent that the system of reprisals and the older Jacobin policy are only factional manœuvres. It is no more a question of defending the republic, which is no longer seriously attacked, but of directing the government. But it belongs to the so-called "government" to govern, and the Parliament is not the "government."

Parliament from the standpoint of governmental action is only an instrument of control.* Under the parliamentary régime it has, it is true, one more function than under the simple representative system. Under the latter it is only an instrument to make the laws, while under the parliamentary system it is an instrument of control as well. It is intended to check the government so soon as any abuse of power is perceptible. If it is dissatisfied with the hand which governs it, it rejects it in order to substitute another. It may not, however, substitute itself and become the government itself, but can only transmit the power to another party-head, and in such a way that there should always be a strong and sufficient power, a personal will which can lead and guide the Parliament itself. The Parliament is not a governing body, because groups, however well adapted to control, are incapable of governing. A group may, however, control the transfer of the powers of government. Now, in order that this may take place, two things are necessary —there must be a head of the government and a majority for the government. The head of the government is the head of the ministry, and he must have behind him a solid

* Cf. Burgess, *op. cit.*, p. 13 et seq.

and compact majority, always ready to support him and to free his political action from parliamentary disturbance, which produces otherwise a chronic state of enervating and servile apprehension. The head of the government, maintained by a disciplined majority, aware of political necessities, should, therefore, have full liberty of action, until there is some abuse of authority on his part or neglect of public opinion, in which case the Parliament transfers the power to another party-head who initiates a new policy which ought to continue until his own abuse of power shall cause the transfer of this power to his opponent. This is the oscillating system which prevails in England and Belgium, exhibiting a most regular action in these two countries. This, however, presupposes well defined and distinctly separated parties, with a strong organization, so that the majority in Parliament shall belong, at least for a tolerably long period, to one of these parties. The formation of great political parties, then, is the first condition for the normal action of the parliamentary system. If these are in perpetual oscillation, constantly dividing into groups, ever ready to disintegrate the Parliament like an undisciplined mob which is always ready to fly to pieces, sacrificing in this way, all party loyalty—no majority, no ministry, no government is possible. It is often said that we lack the men in France; this is, however, a calumny, for it is not the men who are lacking, it is the environment which is wanting to develop their talent.

Let France produce a spirit of free initiative and of free association which the suspicions of a party favoring extreme centralization has destroyed during the last century; let her develop the spirit of discipline which would be the necessary result; let great parties form which would absorb all the living forces of the country, and men will not be wanting. Each parliamentary majority has the leaders which it deserves. There was a time when one party at least in France exhibited this discipline, organized its majority and found a leader; the republican party under Gambetta. It is

true that at this time it still believed that it had to fight in defence of the republic, and that was its watchword. Are we to believe that such party education would not again be possible in France, and might not even become general? Everything, on the contrary, would seem to indicate that this was possible; the most indispensable condition being the cessation of constitutional troubles.

The greatest event in the constitutional history of France in this century is the agreement of everyone, save certain scattered exceptions which are destined to disappear during this generation, to accept the constitution. This event is due to certain accessory causes, as the disappearance of the leading chief dynastic pretenders, and their replacement by successors who do not represent the original party principles; the diminution and impotence of the monarchical parties, and the intervention of the head of the Church. We must, however, attribute this result above all to the way in which the Constitution of 1875, by the modesty of its provisions and the absence of aggressive republican principles characteristic of the earlier period, has insinuated itself into the customs and conditions of the country. The freest scope has been left to historic growth, as the scheme then adopted had no other aim than to furnish a point of departure, leaving to France itself the care of gradually producing a definitive constitution. This definitive constitution, so far as its form and the political system established by it are concerned, has but just been supplied to France. We can now breathe again, and begin to consider the struggle for ideas without troubling ourselves farther with etiquette and pretenders. Let this continue for some time and the outcome will be that the parties will classify themselves according to certain social tendencies; the basis and elements of which are already perceptible.

It might have seemed at first, after the intervention of Leo XIII., that the new classification would take the form which it has in Belgium, namely, a religious one. We are thankful, however, to say that this danger is growing less. We see

that it was, from a political standpoint, only a hoax. Nothing need be said of the effect of this upon the growth of the faith, since the most important questions of practical politics are, in their very nature, foreign to matters of faith, and, consequently, parties which are the outgrowth of different views would, if left to themselves, organize independently of religious questions. It would then be a false view and a misapprehension of the true scope of political action to give a confessional tinge to the discussion of subjects which cannot but suffer by such treatment.

This has happened in Belgium, since the changes produced in the political parties by the disturbances which have been raised in regard to revision, alliances have been formed between the members of the two great parties of former times, the Liberals and Catholics, without taking into consideration the fact that these old lines of cleavage are destined gradually to disappear and to give place to other groupings which are larger and in which the religious question will only find a place as the consequence of the political idea which we have of liberty in general.

The idea of liberty tends, however, to resume its older meaning, and the chief points of discussion will probably be the conceptions of the intervention of the state, freedom of association, respect for religious matters, (excluded henceforth from the field of politics properly so-called,) and the protection of industrial interests by a system of syndicates, practically applied. Finally, there is the important question of communal decentralization, that is to say the destruction of the uniformity now imposed upon municipalities both in the matter of administration, and even in elections, so as to permit certain local political experiments, such as, for example, the partial application of proportional representation. The existing system explains why reforms are so slow in France. They must be made *en bloc*, for the whole country; while they might have a good chance of success by progressive propaganda, if private or communal initiative

could put them into force locally. All this is, of course, only in a state of preparation, and is not yet realized, but we shall soon reach the point where we Frenchmen may be classed into two chief political groups, those who would defend the old conception of political and economic liberty, and those who would favor a progressive evolution. We can distinguish in this last group, the partisans of individual initiative, who, while defending the interference of the state, admit a diversity which shall correspond with the notion of liberty and decentralization; and those, on the contrary, who are the partisans of a certain uniform ideal which they would like to see realized by the state and who are accustomed to reserve for themselves the name of Socialists. Both have always had a common basis, namely the greatest freedom of association,* since that is the only instrument which can serve for the realization of individual efforts, and, consequently, of continued social progress.

How these great political parties will finally group themselves and what their chief idea, since they must have one and only one, will be, is the question which presents itself in closing this study. It is certain that a classification will come, sooner or later, and the action of Parliament will be rendered possible anew by the mechanism of party organization. Of course, some Jacobins will be left, ready to awaken old religious hate and to favor the return of group despotism in the form of single assemblies. There are no doubt partisans of personal power of the imperial or Boulangist type. These are scattered relics of the past which remind us of the terrible constitutional struggles which France has undergone in the nineteenth century. They maintain the unfortunate tradition of anti-constitutional parties, owing their existence to the overthrow of the constitution and a change of régime, instead of being parties grouped about certain social ideals. But the parliamentary system of

* See an admirable article by M. Dareste upon "*La Liberté d'association*" in the *Revue des deux mondes*, Oct. 15, 1891.

the future, it may be hoped, will find it less and less necessary to reckon with these struggles of former times. Liberal and progressive elements will be included, but the system will not act normally, and this is the consoling phenomenon which is beginning to become apparent, except on condition that the liberal and progressive elements shall respect the constitutional mechanism which they have to control. Confident of the future, they will be enabled by powerful and persistent effort to become the instruments of broad historical evolution, and will not rely for progress on the written formulæ in a constitution or upon a coup d'etat.

It is true that this evolution in France meets a very serious obstacle in certain traditions which have become a peculiar trait of mind. But, on the other hand, along with this hinderance, a contrary tendency may be detected, favorable to the evolution of parliamentary action in the sense which has just been described above. It may be maintained that the application of the republican form of government to the parliamentary system can give this latter a new elasticity, the results of which cannot as yet be foreseen, since the direction of the political movement has not yet been defined, effort having been confined to the defence and acclimatization of the republican régime. It is high time, however, to study scientifically the important influence of republican institutions. In this way the ideas may best be realized which have just been indicated as necesssary for the future of the parliamentary system in France. Two things remain to be pointed out in order to finish this essay.

The obstacle, above mentioned, is found in the traditional conception entertained in France, of the function of the state. This is believed to be invested with a mission as a teacher in philosophic and religious matters, a fact which can be accounted for historically. Under the *ancien régime*, and according to a notion universally accepted, but especially prevalent in a country having religious unity, the state was the guardian, not only of public morality, but of the religion

of the country. It had, consequently, a religious doctrine and moral principles. The revolution necessarily changed this. Its aim was to establish a condition of things exactly the opposite of that which existed before. It, too, must assign to the state a doctrine and moral principles, but these were opposed in every respect to the former ones. The precise conception of the state as a philosophical instructor and schoolmaster matters little, however, since there has been but slight change in either respect. To-day the state is scarcely looked upon in any other light, and hence the paralysis by religious difficulties of so many good intentions in France is explained. A whole party, that which has predominated heretofore among the republicans, believes its mission to be the maintenance of an anti-religious or, as it is ordinarily expressed, without indicating very clearly the difference, an anti-clerical attitude.

Unfortunately, the Conservative party, at least as formerly constituted, should they return to power, might believe it to be their duty also to have a theory and political principles which the state ought to teach and defend. There is current talk of a Christian social state and other similar suggestions. Are we to understand by that, a social state which leaves all freedom of expansion to Christianity, or is there the secret desires for a political state whose institutions shall adapt themselves to certain religious formulæ? It is this kind of imprudent talk which deprives the Catholics in France of all the influence which they might and ought to have, and which arouses so many suspicions against them. Thus we see that the burden which history imposes upon the Old World is very heavy. It draws, as it were, a circle about the older lands from which it is difficult for them to escape, in order to join the advance guard of modern times.

With the diversity of opinions, of principles, and of schools which characterizes the modern period, and which may be lamented as an evil, but which must nevertheless be faced as a fact, the action of the state must be reduced to a minimum in

the performance of religious and philosophic functions of whatever kind, restricting itself above all, to industrial and economic duties. Moreover, this idea of a modern state implies the greatest liberty to private as well as collective initiative,* so as to leave to the domain of freedom and of association, all that wide range of duties which are connected with religion or philosophy, and, consequently, those relating to education, and even in a great part the function of instruction, so far as this is synonymous with the moral formation of the individual. So long as the political parties continue to strive for the triumph of religious doctrines, or metaphysical views, in the broadest sense of the word, there is little to be hoped for from a regular application of the parliamentary system. The views upon the questions which ought to belong to the province of the state and of the government—economic and social problems, administrative reforms, etc., will be disturbed by an undercurrent of dogmatic thought, and heterogeneous elements will be introduced into the formation of the parties, foreign to the points of view which should serve as the nucleus of cohesion. The policy of concentration will be retained by the right as well as by the left, who will rally the most diverse parties by a single watchword, forming artificial majorities always ready to disintegrate so soon as the true questions upon which the action of the state ought to be concentrated arise.

This is the idea of a modern state and of its functions which must be emphasized. It must be defended against the Liberal party, in the narrower sense of the word, which would, even when it is a question of the proper province of the state, that of realizing the interests of the public order when private initiative is not sufficient, impose in every matter the maxim of "*Laissez faire et laissez passer.*" On the other hand, the intervention of the state must be checked, as against the theorists of every school who would attribute to it functions which do not belong to it. On the

*Cf. Burgess *op. cit.*, Vol. i, p. 83 et seq.

one hand, the province of state intervention must be defined and controlled; but in those matters which belong to the state its mission should be defended and its resources increased.

Are we justified in hoping that this education of political parties is possible in France? The reply is a difficult one, but it may be said that there seems to be decisive proof in favor of this possibility. It seems apparent that in the political field the prospect of artificial combination, both on the right and on the left, is at an end, and that there is a readiness to grant liberty of action to each, conformably to its spontaneous tendencies. Groups can form which not only have no constitutional label, but which shall have no secret religious or philosophical platform—parties which shall seek to realize social and economic reforms, leaving to freedom, complete and unrestricted, without fear of theories or religious sects, the care of the moral and religious interests of the country. If this education could be realized, the formation of great political parties would be facilitated. May they not perhaps be formed upon this very basis of the conception of the modern state? One of them favoring the restriction of the state to the minimum field of action, but without supporting the idea of non-intervention in matters which belong to it; favorable, therefore, to liberty, but not to liberalism. The other party would advocate on its part, the application of certain philosophical conceptions in regard to social problems, and depend upon the centralization and administrative unity which have been at once the strength and the weakness of modern France, for the realization of their ideas. Every indication would lead us to believe that such will be the great parties which will enter the lists in the parliamentary system, as it promises to exist in France in the future. Let this movement, which has already commenced (as may be seen in the interesting political speeches of the electoral campaign during the summer of 1893, in the policy of the chief representative of

the moderate Left, as well as in certain characteristic attempts made at the election itself) become firmly established and the parliamentary system will be rendered feasible and fruitful.

But there is another point which has not been sufficiently treated, namely: What modifications may the introduction of the republican form of government, that is to say, the system in which the head of the state is elective and temporary, produce in the action of the parliamentary system? This system owes its existence to the necessity of finding guarantees against the abuse of power by the hereditary head of the state. Why, then, should the guarantees be maintained, since the danger of personal government no longer exists in France? It is well understood, as it has been said above, that the maintenance of the parliamentary system would be essentially impossible in a republic where the president was chosen by direct universal suffrage, or by an election of the second degree. An illustration of this may be found in France in 1848, and, to-day, in the United States. It was precisely with the view of maintaining the parliamentary principle, or as we may say, the irresponsibility of the head of the state which forms the keystone of the system, that the Constitution of 1875 vested the election of the president in the National Assembly. A considerable group advocates, at present, the election by universal suffrage, adding, as a logical supplement, the referendum for the benefit of the head of the state. This referendum, as is well understood, is optional, destined to settle conflicts between the executive power and the Parliament by a simpler and more convenient process than dissolution. We should have in this way a system where the president governs directly with the people, and relies exclusively upon the people. This would mean, in France, the abdication of the people in favor of their head, that is to say, precisely the opposite of the parliamentary régime. Laying aside our prejudices on this point, there

would seem to be little more chance of success for this movement than for the suppression of the senate. It is, in fact, this latter reform, should it be realized, which would inevitably, some day or other, lead to the first. Everything depends upon the present constitution, and should one of its elements disappear, this would result in a complete transformation.

It is possible, finally, that the system of direct government by the people may become the system of the future; but that presupposes a decentralization similar to that of Switzerland. This would imply, however, an education of the masses which has not yet been carried out, which in fact, is entirely wanting, since the public has been scarcely found mature enough for simple suffrage applied in the choice of representatives. It is, consequently, out of the question to think of allowing the people, as they are organized at present, to vote upon the laws. Let us maintain the existing form then, even if a transitional one, of a government left in the hands of elected groups.* And since we can only foresee the development and logical evolution of the parliamentary government, we must base our system on the hypothesis that this will continue to exist and try to estimate how the system will work with a head elected by the Parliament.

So far, the presidents elected in France have been chosen to a position of neutrality, destined to remain in the background and maintain an equal balance between the parties. They were admirably adapted to a position of irresponsibility, like that of a constitutional king, but with less personal and social influence which has made them inferior in a way to the princes in parliamentary monarchies.

Those who drew up the Constitution of 1875 did so in a spirit very respectful toward parliamentary traditions. This was due, with some, to a definite notion of the rôle of the head of a parliamentary state. With the majority, however, it is attributable to their system of subordinating the executive

*Cf., on the future of the Referendum, Laveleye, *op. cit.*, p. 146 et seq.

to the legislative power. The disarmament of parties at the presidential elections was also promoted by the subdivision of parties, of which we have spoken above. But can we flatter ourselves that this condition will be a permanent one? Should the formation of great parliamentary parties take place in France with the continued predominance of a strong governmental majority, belonging alternately to the different groups, can we imagine a presidential election taking place during the predominance of a real and disciplined majority, and still being carried out upon the basis of absolutely disinterested policy? That is improbable since the majority which was in power, when the National Assembly was summoned for the election, would, necessarily, place one of its own members at the head of the state. Undoubtedly, not its active head, destined for conflict and not for an irresponsible position, and who would be reserved for one of the great positions, like that of First Minister, for example, but some one who would sustain him and whose influence would support the Cabinet.

It would happen, necessarily, under a parliamentary republican régime, that the president of the republic would be, in a way, designated by the Parliament at the same time as the ministry, and that he would act in harmony with his Cabinet, as in America. With this difference, so far as the United States is concerned, that the organ of the executive power emanates from popular suffrage, instead of being chosen by the National Assembly as in France. But in France, should both president and ministry proceed from parliamentary majorities, what would become of the theory of irresponsibility? Would it still be possible in practice? We all remember what happened under the government of Thiers, who was only another minister without a portfolio, and who was obliged to retire upon a vote expressing a want of confidence in the ministry, which was identified with him. In any case, we can imagine the power which the government would possess, so soon as the head of

the state, the ministry, and the parliamentary majority, should go hand in hand, and those who complain to-day of the weakness of the government may reassure themselves for the future in considering this result. Is it not obvious, too, in view of this triple governmental power, that the existence of an upper chamber, occupying the position of mediator, would become more and more necessary as a counter-weight to the despotism, at least, momentary, which might result from this political consolidation?

The parliamentary system, combined with the election of the head of the state by the Parliament, is a parliamentary system which may become an instrument of government of the first order, for so soon as the majority shall find itself dominated by two powerful forces, proceeding from it, the president and the ministry, it will immediately, and necessarily, submit to their directing influence. Here we should have an executive power which would give an impulse to the majority, instead of being dominated by it.* We must maintain, by means of popular suffrage and repeated elections, all the influence and free play of universal suffrage, so as to allow the changes in public opinion to make themselves felt, and leave to the people the means of checking at times the despotism from above, reserving to a permanent upper chamber the function of maintaining firmly the traditions of the country.

It is obvious, however, that when these combinations take place, the system of a long presidential term becomes impossible, in view of the solidarity which would practically have been established between the president and the general policy of his government, so that, the majority having overthrown the ministry, it might sometimes be difficult for a president who is too much involved in the issues not to follow the ministry. Undoubtedly, it would not always be so, for the

* It must be kept in mind that the President is elected, not by the Chamber of Deputies alone, but by both Houses which gives him a certain independence in the face of majorities in the Lower House. This obviously permits a coalition with the ministry against such majorities.

system so established would be the most elastic imaginable, allowing a succession of insignificant and neutral presidents, occupying the position held by constitutional kings, and contented with this modest rôle like the President of the United States.

There is no reason to be apprehensive, in taking this view of the situation, if one change be made. The presidential period must be shortened, the seven years now established being due to a historical accident, the Septennat. With the presidential term somewhat shortened, the perspective of increased personal authority would create no apprehensions in view of the possible "revanche" on occasion of a downfall, and of the possibility of substituting a neutral president for a brilliant and active one. This is the fundamental constitutional modification which will force itself upon us sooner or later. It would not, however, be an attack upon the Constitution, but a means of facilitating its action by introducing into the parliamentary republican system something which distinguishes it from the parliamentary monarchical system, for at bottom they can never be the same thing. A president of a republic has no traditional or social influence upon which to rely. It is necessary through the method of election and the mechanism of the constitution, that he should exercise the political authority which shall counter-balance the exercise of governmental authority.

The French Republic will exhibit in the future a mixture of monarchical parliamentary principles, and of the ideas which inspired the Constitution of the United States. In other words, personal authority vested in the head of the state will be combined with the influence of parliamentary government. It has, moreover, been claimed by some that the parliamentary system has begun to be introduced into the American system, at least there is a tendency in this direction.* The French parliamentary system will adopt

*See, for example, "Congress and the Cabinet," by G. Bradford, ANNALS OF THE AMERICAN ACADEMY, November, 1891, Vol. ii, p. 289, and November, 1893, Vol. iv, p. 404, also "Cabinet Government," by Freeman Snow, *ibid.*, July, 1892, Vol. iii, p. 1.

certain practices and conceptions borrowed from the organization of the executive power in America. This will be its evolution in the future. It is of the utmost interest to observe how this development is taking place in France, gradually and unconsciously, by the progress of events, in opposition to programs posted up by parties and in spite of all the attempts to revise the constitution. It is this social law which it has been our object to emphasize as characteristic of the evolution of the constitutional laws in France.

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