

Kazimierz Michał Ujazdowski¹⁶

6 The Case of France: Vitality of the Republican Legal Tradition

In my view, a prerequisite for the recognition of the unique nature of French constitutionalism is the multi-aspect analysis integrating legal, doctrinal and historical elements. I make analysis of the key sources for the French republican tradition: constitution, declarations of human and civil rights (beginning from the Declaration of Human and Civil Rights of 1789), adjudications of the courts, and opinions of constitutionalists and statesmen. The interpretation of these sources confirms vitality and continuity of the French republican tradition in which sovereignty of the nation and indivisibility and secularity of the republic play primary roles. Statism, centralism, and opposition to the strong position of the judiciary system are the principles determining the unique characteristics of the French constitutionalism. The Fifth Republic, established by Charles de Gaulle in 1958, did not change the French republican tradition. Contrary to the popular thesis, the constitution of 1958 did not establish a republican monarchy. De Gaulle embraced republican tradition defending it in a fierce dispute with Vichy and founding the Fifth Republic through the institutional revolution (including strong presidency, consolidation of executive power) conducted within the framework of its primary principles.

It is impossible to understand the uniqueness of French constitutionalism as long as the notions of *republic* and *republican legal tradition* are not discussed. At the same time they carry a particular meaning on the Seine and do not match their universal interpretations. According to the universal theories (Szlachta and Pietrzyk-Reeves, 2004; Filipowicz, Gładziuk and Józefowicz, 1995), republic is an alternative political system for the hereditary transfer of power (in this meaning elective monarchies were actually republics) or, in the extended version, they see the essence of republic in the existence of community of citizens gathered around laws and values. On the other hand, French republic is primarily the outcome of the French Revolution that established the new legitimation of power based on the specifically understood idea of the nation's sovereignty and molded its values in the stark contrast to the monarchist tradition (Quermonne, 1992). In Maurice Agulhon's view (Agulhon, 1990; Carcassonne, 2007; Luchaire and Cognac, 2008; Vimbert, 1992) being a republican primarily means being an advocate of the non-personal, non-hereditary, non-permanent, and non-arbitrary power and republic means identification with the tradition deriving from 1789.

6.1 Idea of the Sovereignty of the Nation and Its Ramifications

Thus, in France, the notion “republic” conveys content different than that offered in the universal interpretations and means not only opposition to hereditary transmission of power but also its new legitimacy inspired by the philosophy developed by Jean-Jacques Rousseau; and, which is equally significant, some axiological project expressed in the Declaration of Human and Civil Rights, with a key role of the rules of the indivisibility and secularity of Republic. The sentence spoken by de Gaulle on the Square of Republic in September, 1958, just prior to the constitutional referendum, that republic was “the sovereignty of the people, the call of liberty, the hope of justice,” (Maus, 1998) includes one of the most famous formulas determining the French understanding of the republic. This was repeated by Philippe Séguin (1988) in his famous speech delivered during the debate on the Maastricht Treaty ratification. He reminded that republic has a unique meaning in the French political tradition as it is not only a kind of the institutional system but a system of shared values molded by the heritage of revolution.

Republic is primarily a system of the commonly shared values that molded France into what it is still today in the eyes of the world. The Republic of France exists – just as the Republic of Rome once existed. This motto has remained the same since the very beginning: the sovereignty of the people, the call of liberty, the hope of justice (Séguin, 1988, pp.311-321).

Given such context, we will better understand the opinion offered by the outstanding French historian (Furet, 1989; Furet, 1994) who said that republic in the meaning of the French intellectual tradition that developed over the last two decades of the 19th century, when the revolution accomplished its goals and became institutionalized. “Only the victory of republicans over monarchists in early years of the Third Republic is an ultimate proof of the victory of revolution in all the country” (Furet, 1994, p.10). In the essay “A Real End of the French Revolution” François Furet (1994) asserts that Jules Ferry, a teacher and a missionary of the 1789 principles, is a symbol rather than an instrument of that long and victorious campaign. Republic was ultimately molded when the legal institutionalization of the heritage of French Revolution was effected. Passing the act that recognized *La Marseillaise* as the national anthem (1879), recognition of 14 July as the national holiday by the Senate in 1880, and the 1875 constitutional amendment defining relations between public authorities, which excluded restoration of monarchy (Droin, 2009). Article 8 of the act on the organization of public organs was supplemented with the following sentence: “A republican form of the government may not be subject to any revision of the constitution. Members of the families that ruled in France are unelectable for the office of the President of Republic.” (Godechot, 1970, p. 337). The 1884 amendment abolished public prayers following the inauguration of the new term of the assembly chambers (previous section 3 of article 1 of the aforementioned act set forth that “On the Sunday following the opening of

the session, prayers shall be raised in churches to ask for support for the Assembly members in their work”) (Godechot, 1970, p.334) and introduced a reform of Senate consisting in the deprivation non-dismissible senators of mandates and abolishment of preferences for rural districts (Bigaut, 2000).

Moreover, the two last decades of the 19th century witnessed introduction and development of the state and secular educational system developed by Jules Ferry. The last stage of the revolution institutionalization process comprised introduction of the radical separation of Church and State (Poulat, 1987; Remond, 1985).

Noteworthy, the republican nature of the state, secularity and indivisibility of Republic are – according to the Constitutional Council’s ruling of 27 July 2006 – inseparable from the French constitutional identity (Wojtyczek, 2008; Wójtowicz, 2010a; Wójtowicz, 2010b; Conseil-Constitutionnel, 2006). In this way the Constitutional Council confirmed that the heritage of French Revolution identifies core constitutional values. Before that, as early as in 1953, the Council of State highlighted the republican constitutional tradition, exposed in the Declaration of Human and Civilian Rights of 1789, in the preamble to the Constitution of 1946. Vimbert (1992) analyzed the notion “republican tradition” understood as a set of fundamental republican values confirmed by the historical experience and political practice.

Thus, it is no doubt that the French Republic is the country where citizens identify themselves with the heritage of the French Revolution. This marks a new beginning for the French statehood, which is manifested by the lack of any references in the republican constitutions to the heritage of the pre-revolution state. The Nation is defined as the community molded by history and culture, which is present in the German and Polish constitutional tradition, but rather a political community united around the heritage of the revolution. It is because of this reason that Philippe Séguin (1988) asserted that “a notion of the nation is stronger than a notion of Homeland”. This explains the opening of the Republic to the people not molded in the French cultural environment but accept the heritage of the revolution as well as an open sense of citizenship based on the law of the world (Séguin, 1988). Chantal Delsol (2011) used to write in the similar spirit: “Republican France predominantly wished to maintain the unity between multicultural groups, embrace all the people but still be united”.

Republic also molded a new meaning of patriotism understood as an act of the people’s disagreement with the conquest of France combined with the identification with republican values. “If we were to identify the day of its birth, I would say it was rather Valmy, when people took up arms, and not the Convention on the day after, when Assembly Members made decision to overthrow the monarchy” – Philippe Séguin (1988) said in the aforementioned speech. When *Comité général d’études* appointed by the Résistance surveyed its members, nearly all respondents associated republicanism with patriotism. An anonymous historian involved in the survey made the following conclusion:

French people perceive republic as a system of all people, it is a great idea that heightened people's feelings in all national issues. It is Republic that repelled a threatening invasion in 1793, revived French feelings toward the enemy in 1870, managed to maintain French unity between 1914 and 1918, during the time of dreadful ordeals; its splendor is the splendor of our people and any defeat is our pain (Michel and **Mirkine-Guetzévitch, 1954**).

Moreover, the Republic molded by the heritage of the French Revolution, is rather the country of the nation than the community of citizens in the spirit of republican tradition derived from Cicero. In the Ciceronian tradition "Republic is the matter of the Nation" and "the Nation is not just any group of people gathered by any means but a large group of people united by the recognition of the same law and the benefit of the shared living." (Szlachta and Pietrzyk-Reeves, 2004). Meanwhile, regarding the French Republic, the existence of the real community of citizens supporting specific laws and values is not as essential as the very fact that the people possess the state built on the values molded by the revolution heritage. This is why Gérard Baudson (1994) asserts that a concept of the state-nation is a voluntarist and political creation. "Thus a contract consists in establishing the state – therefore «resorting to the state» is something most essential. If the state-nation disappears, a social contract between citizens will be severed." (Baudson, 1994). It appears that the social isolation of de Gaulle and Résistance resulted considerably from the lack of tradition of national activity outside state structures.

The notions of the national sovereignty and *volonté générale* set forth in the Declaration of Human and Civil Rights (Articles III and VI), molded under the influence of Rousseau, are fundamental in the French republican tradition). Primarily, attention should be paid to the radicalism of the sovereignty transfer from the royal power onto the nation. Implementation of this rule resulted in dramatic ramifications as even the Constitution of 1791 – formally a monarchist one – challenged royal sovereignty. In his book on the French constitutionalism, Michel Morabito expressed a view that the Constitution of 1791- pursuant to the 1789 ideals – challenged the royal sovereignty investing the king with a status of the people's representative. The monarch exercised the executive power and participated in exercising the legislative power but had no share in the constitutional power that solely depended on the legislative bodies representing people (Bourmaud and Morabito, 1996). Similarly, Adam Piasecki (1928) in his work on the parliamentarism of the Third Republic, concluded that: "In France, the transfer of sovereignty from the king onto the nation was revolutionary. The Constitution enacted by that Assembly, affixed with the declaration of human rights, is the manifestation of the theory on national sovereignty adopted in the hereditary monarchy." (Piasecki, 1928). Hence the basic difference between American and French revolutionary experience may be identified. In the first phase of American revolution, before the constitution of the Union was enacted, the people's right to participate in the legislation process or the ban on actions without the people representative's consent, were expressed in the *Bill of Rights* of the states of Virginia, Maryland and Massachusetts (Jellinek, 1905), while the French declaration challenged totally the

monarchy's participation (negation of royal sovereignty) as well as the participation of intermediary organizations (such as corporations) stipulating that it was solely the people who could exercise the sovereign power.

Total exclusion of the monarchy from the area of sovereignty as early as in the initial phase of the French Revolution is not the only hallmark of the French understanding of people's sovereignty. More importantly, the idea of people's sovereignty developed under the influence of Rousseau's thought and was combined with the concept of the general will. According to the expression offered by Georg Jellinek (1905), a renowned German lawyer, *volonté générale*, which "makes autonomous decisions about its boundaries and neither should nor may be limited by any power," (Jellinek, 1905) is absolutist in the thought of the author of the *Social Contract*. Thus, in Rousseau's view, sovereignty may solely be granted to the entire nation based on the complete ceding of individual rights to the nation-sovereign. (Jellinek, 1905; Boucher and Kelly, 2003; Pietrzyk-Revees, 2010). In his excellent sketch, Georg Jellinek (1905) expressed a view that the social contract developed by Rousseau and inspiring the Declaration includes only one clause: waiver of all individual rights in favor of society. "An individual retains not a single atom of law at the moment he becomes a member of the society. He is invested with all the rights by the *volonté générale* that unilaterally determines its boundaries and no power may or should restrict them. Even the ownership right is granted to an individual only with the state's consent." Jacques Maritain offers a similar opinion. In his view, a myth of the general will was used to transfer the separate and transcendental royal power to the nation that was also invested with a separate, transcendental, and absolute power (Maritain, 1993; Maritain, 1938). It is hard to reconcile the French republican tradition with Tocqueville's view where it is the individual's sovereignty that provides the basis for the nation's sovereignty at the last count (Tocqueville, 1996).

An absolutist understanding of the general will underlies the idea of the sovereignty of the act as the outcome of its expression. Thus the sovereignty of the act would mean its primacy, subject unlimitedness and a rule that it may not be subject to the review of constitutionality. A number of scholars, including J. Barthélemy, P. Duez, L. Duguit or M. Hauriou, put forward a proposal to review the constitutionality of acts, which would give citizens a right to institute such review in the event of violation of the constitutional rights of individuals. Yet such proposals were rejected as contradictory to the rules of Republic (Starzewski, 1928; Duez, 1929; Kubiak, 1993). Although provisions of the Declaration of Human and Civil Rights of 1789 were assumed to have a special status, but at the same time it was assumed that parliamentary obligations to effectuate them are of only moral nature since the resolutions passed in the Assembly are not subject to any verification as they express the general will. Noteworthy, the French republican tradition is not free from internal tensions. On the one hand, Declaration of 1789 recognizes freedom and ownership as natural human rights that are not subject to the statute of limitation. On the other hand, however, the nation's general will is absolutist and poses a threat to the rights of an individual in Rousseau's

view. As we could see, advocates of the establishment of the review of constitutionality of acts had to address that question in the doctrinal dimension.

6.2 Statism and Centralism

Thus statism and centralism found solid support in the idea of the nation's sovereignty defined in such manner. The administrative monarchy was replaced by indivisible, unitary, and centralized republic. Tocqueville's works include a penetrating description of the continuity of administrative centralization since the decline of monarchy until mid-1800s (Tocqueville, 1994; Tocqueville, 1996). "Meanwhile, Revolution was against the monarchy and provincial institutions. Driven by the blind hatred, it destroyed everything that had been before its outbreak, both absolute power and any organizations that could weaken its force. Revolution was republican and centralist at the same time" (Tocqueville, 1996).

In the aforementioned paper, Jacques Maritain (1993) also discerned the continuity between monarchy and republic in this sphere since both political models did not tolerate the rights of fragmentary communities in the state.

The centralism of the French Republic remained its hallmark until modern times. Inability to reconcile the French model of republic with the federation and confederation model is quite obvious. The rigidity of French centralism is particularly noticeable in the list of the decentralization range in the unitary states. Notably, in early 1980s French Constitutional Council considerably limited the range of reforms aimed at the state's decentralization. Their resumption by president Chirac required constitutional amendments, which were implemented in 2003 (Favoreu and Philip, 2007; Ohnet 1996).

François Furet and Michel Morabito indicated that rejection of historical and more complex legitimization theories in the Declaration of Human and Civil Rights of 1789 must have inevitably led to the centralization and refusal to grant corporations public and state rights. François Furet (1994) wrote about that rejection during the crisis of the legitimization-concept monarchy, most strongly expressed in the works of Henri de Boulainvilliers, who emphasized the rights of intermediary organizations as the third – along with the royalty and nation – partner of the contract constituting France. On the other hand, Morabito mentioned a political concept developed by Malby, which recognized the nation as the compound community of social classes, putting stress on "the separate representation of different social classes inside the organ of the legislative power." (Morabito and Bourmaud, 1996). The idea of the nation's sovereignty and related rule of indivisibility has also a statist and centralist sense. Noteworthy, in their extensive commentary to the Constitution of the Fifth Republic, François Luchaire and Gérard Conac show its numerous ramifications. Indivisibility of the republic involves a unitary nature of the state, concentration of all normative power in the central state organs, a ban on investing local and regional communities

with the competences in foreign policy affairs and, on the other hand, extensive competences of the government administration in the control over local self-governments. Authors highlight the fact that voting in the European Parliament elections is not the manifestation of sovereignty nor its delegation to the institutions that would be irreconcilable with the rule of indivisibility of the republic. Moreover - in their view - that rule results in the indivisibility of French nation, which means a ban on granting collective rights to the language, religious, and ethnic minorities (Luchoire and Conac, 2008).

It should be reminded that political rules of the French revolution were aimed to affect the rights of associations and corporations. In the extreme scenario, this meant a ban on establishing any associations or corporations. This is the provision of Article 1 of *Loi Le Chapelier* (“Le Chapelier Act”) passed on 17 June 1791: “Since the abolition of all forms of corporations in the same class or occupation is one of the bases of the Constitution, it is forbidden to recreate such corporation under any pretext whatever” (Ptak and Kinstler, 1999). The Act banned any forms of corporations or associations of the “citizens of the same class or occupation,” introduced fines for organizing such associations and prohibited administration to accept any addresses or petitions “written on behalf of the class or occupation” (Ptak and Kinstler, 1999). Assembly members were convinced they enforced the provisions of the French Constitution that recognized solely individual and people’s rights. Corporation rights were recognized as a threat to the freedoms confirmed in the Declaration of Human and Civil Rights. Noteworthy, advocates of the corporation rights had to challenge the republican rules. René de La Tour du Pin, a precursor of the corporations-based political solutions, criticized the Declaration of Human and Civil Rights. In his view, the Declaration inspired liberalism and socialism and denied associations their rights recognizing only individuals and the nation (Strzeszewski, 1985). It also should not be surprising that Léon Duguit – the author of the solidarist concept of law - was extremely critical about the notion of the nation’s sovereignty and republican legal rules and supported recognition of the rights of economic and professional corporations (Duguit, 1921).

Republic continued to deny the rights of associations and corporations even after the severe Le Chapelier Act had been repealed. The French political model prohibits investing professional and economic corporations with public rights, which is quite common in a large number of the European countries. Economic interests are represented exclusively inside the state structures, which explains a unique nature of the strongly statist model of the French capitalism. In the 1930s, a manner of expressing opinions about the bill became institutionalized in the form of the Economic Council. Initially, the Council acted on the basis of the presidential decree of January 1925 and then the act of 1936. In the Fourth Republic, the Council became a constitutional institution. Characteristically, it is this institution that Konstanty Grzybowski recognized – just like the Council of State – as an intermediary body limiting the power (Grzybowski, 1947). Given the lack of the real social bodies independent of the

administration structures, it was the national institutions enjoying autonomy, such as the Council of State or the Economic Council, that were to check the political power. The latter one developed as a consultative institution. It is quite meaningful that no decision was made to invest it with a right to contribute to the development of the collective contracts. This was due to the alleged threat of the development of corporatism beyond the state's control (Grzybowski, 1947; Bloch, 2008).

6.3 Opposition to the Rule of Judges

It should also be noted that the republican tradition remained reserved toward a strong position and independence of the judiciary. One of the key rules of the French judicial system was the nomination for the position of judges done by the executive power (Perrot, 1991; Renoux, 1992). Notably, the French judiciary is not regarded as an independent power but as a function. The document produced by the Bardoux Committee, which is going to be thoroughly analyzed below, included one of the most interesting opinions about the crisis of the Third Republic and the conclusion that, unlike British, French judiciary has no position of independent power (Bardoux, 1936). It is recognized that judicial institutions are not intended to fulfil the idea of the nation's sovereignty, which is confirmed in the commentaries to the Constitution of the Fifth Republic (Carcassonne, 2007). Encroachment of the judiciary into legislative powers has always been regarded as a violation of the French republican model. This distrust was manifested in the speech delivered by Nicolas Sarkozy in July 2008 to begin the work on the revision of the Constitution (Documentation Française, 2008). A critical attitude toward a strong position of courts is also explained by an explicit objection to the judicial control over the constitutionality of acts (Starzewski, 1928; Kubiak, 1993; Garlicki, 1993). For the same reasons, a specific model of the administrative decisions control excluding any participation of the courts of general jurisdiction has been developed (Izdebski, 1990; Longchamps de Berier, 1962).

The idea of the nation's sovereignty – “the sovereignty of the will of all people” according to the definition offered by Carré de Malberg (1931) – has become the most crucial element of the continuity of the republican political system, legitimization of national authorities, and law (an act as a manifestation of *volonté générale*) (Vedel, 1990). In his thorough study on the Third Republic, Adam Piasecki (1928) emphasized that the notion of the nation's sovereignty, taken from the philosophy developed by Rousseau, provided the ideological basis for the constitution of republican France. Presumably, this was even the basis of all post-revolutionary constitutions except two periods: the Restoration between 1815 and 1830 and Vichy. The essential controversy between Republic and Restoration, discussed by Furet, should not be regarded as a journalistic formula since this is a good reflection of the fundamental difference between French monarchist and republican tradition. Only the Constitutional Charter from the period of Restoration, effective between 1815 and 1830, restored the

monarchic legitimization rules and challenged the republican order. According to Adhémar Esmein, an outstanding French law expert, whose influence on teaching constitutional law in Europe is difficult to overestimate, “The most significant rule expressed by the Great Revolution is a principle of the nation’s supremacy. Apart from the 1814 Chart, it was recognized and adopted as the basis in all – so much different – French constitutions” (Esmein, 2001). Thus a principle of the nation’s sovereignty was the basis of the constitutional monarchy from the years 1789-1792, including the July Monarchy, Consulate period, and First and Second Empires. It is true that the republican tradition opposed Bonapartism and its personalized and arbitrary power. Yet it should be remembered that the empire adopted republican axiology along with the reference to the nation’s sovereignty and spread the revolutionary political and legal heritage beyond the borders of France.

As the idea of the sovereignty of the nation was a primary element of the republican tradition, it was unavoidable that the question about the subject of sovereignty became one of the central constitutional issues. Regarding these issues, the republican tradition is diverse. Jacobin Republic and the Second Republic, albeit different in many respects, followed Rousseau’s thought in their recognition of the direct democracy (First Republic), universality of civil-political rights and direct presidential elections (Constitution of 1848). For many years, the Third Republic associated republican principles with the parliament’s supremacy, which was a reference to Sieyès who justified a monopoly of legislative power over the expression of sovereignty (Sieyès, 1989) in his famous writing, “What is the intermediary organization”?

The Republican constitutional doctrine developed by Adhemar Esmein provided a battery of arguments in support of such a political system. In Esmein’s view, ethos and competence of the parliament members offered the best guarantee of respect for freedom and rational decisions beneficial for the public good. This outstanding lawyer openly referred to Montesquieu’s thought and fiercely opposed any forms of sovereignty exercised directly by the nation. He rejected the institution of referendum as he perceived this as a populist threat and a risk of the destruction of law (Esmein, 1928). Contrary to the warnings De Gaulle gave in his historic speeches delivered in Bayeux and Espinal, the Fourth Republic followed those traditions. Article 3 of the Constitution of 1946 expressed this explicitly, setting forth that in all fields, except the Constitution, “nation exercises sovereignty through its representatives sitting in the National Assembly.”

So what is the Fifth Republic that celebrated the 50th anniversary a few years ago? I am deeply convinced that the Constitution of 1958 proves vitality of the republican legal tradition. Contrary to a widespread opinion this is not the republican monarchy (Aron, 1997; Duverger, 1974).

6.4 The Fifth Republic – Institutional Revolution within the Framework of Republican Tradition

De Gaulle grew up in a family whose members were monarchists but he advocated state patriotism and accepted republic as a permanent form of France's existence. His views matured under the influence of Maurice Barrès and evolved into the state patriotism that accepted the republican and nationalist writers, such as Charles Péguy, and the republic as such. De Gaulle's state patriotism was inclusive toward the diverse ideologies and sought consolidation of the state as a tool of the power of France (Duhamel, 1986). Thus De Gaulle did not think about combining the monarchist and republican traditions but rather the republic integrating a number of ideological families. During WWII, as the leader of Free France, he consistently and with great determination consolidated the republican tradition in the confrontation with Vichy. He had a right to write in his memoirs that in 1940 he "saved Republic from being buried" as it was abandoned by the vast majority of political elite (De Gaulle, 1968). Hence *Rétablissement de la légalité républicaine*, proclaimed on 9 August 1944, was a logical consequence of the legal and national doctrine of Free France. In the years 1944-1946, as the prime minister of the provisional government, he transformed the republican principles into the foundations of post-war France. Owing to de Gaulle, the ideas of indivisibility, secularity, and the democratic and social state gained the status of the primary constitutional rules in the Constitutions of the Fourth and Fifth Republics. It should be stressed that de Gaulle totally accepted the rule of sovereignty of the nation as the principal one for the public order. Moreover, he was convinced that this rule should involve the democratization of France. This was a deep sense of the decision made in autumn 1945 on the constitutional referendum, which meant that the nation was granted the right to participate in *pouvoir constituant*. Thus, it is doubtless that de Gaulle consolidated the republican and constitutional identity of France. Therefore, the Fifth Republic could only be established as an institutional change in the republican axiology.

In the preamble to the Constitution of 1958, the French nation proclaimed attachment to the human rights and principles of the national sovereignty, just as set forth in the Declaration of 1789 and the preamble to the Constitution of 1946. Article 1, fundamental to the state's identity, defined France as the indivisible, secular, democratic, and social republic. The preamble and the three first articles of the constitution integrated all crucial republican threads (Constantinesco and Pierre-Caps, 2004).

At the same time, a deep institutional shift was effectuated. The Fifth Republic built a strong presidency, which received a mandate in the 1962 general elections; consolidated the executive power, which was then entrusted to two bodies, at the expense of the legislative power; but retained the government's accountability before the parliament and introduced direct democracy. The reform of 1958 provided tools that enabled France to pursue active national policy and retain a strong position in

Europe. The speech Michel Debré delivered in a forum of Conseil d'État, claimed that “all French political power system must be reconstructed. Otherwise, there will be no state, no democracy and, consequently, no France and Republic.” Those words were a perfect manifestation of the reformatory intentions but also proved that French political elites did not abandon their superpower ambitions (Maus, 1998). Noteworthy, De Gaulle democratized the republican legal tradition according to the view that the supreme form of sovereignty is the sovereignty exercised directly by the nation. Theoretical arguments for abolishing the parliament's supremacy were developed by two outstanding lawyers: R. Carré de Malberg and René Capitant (Maus, 1998; Capitant, 1954). The Constitution of the Fifth Republic provided for a considerably wider range of the public vote: introduced general presidential elections, parliamentary elections due to the dissolution of the parliament, and, along with the constitutional referendum, a legislative referendum. It should be highlighted that on the day when the Fifth Republic was established, France was the first big European country that implemented the institution of referendum for making decisions crucial for the country, including constitutional amendments. Since that time referendum has become a constitutional instrument in Italy and other countries.

6.5 Conclusions

I would also like to draw attention to one negative aspect of the republican tradition – elimination of the solutions contrary to the French understanding of the nation's sovereignty and indivisibility of the republic. It was this specific understanding of sovereignty, as something that only the whole nation may exercise, that did not allow de Gaulle to transform the corporative ideas into practice and introduce the representatives of professions and business organizations to the Senate. De Gaulle endeavored to do this twice: in 1958 and 1969 – in the referendum. In both cases the opponents of his proposal highlighted its contradiction to the principle of indivisibility of the republic, which forbade any redistribution of sovereignty. The power of republican tradition did not allow for any evolution of the Supreme Judiciary Council into the corporative body. The Minister of Justice retained a right to appoint judges and supervise prosecutors. This is a manifestation of the traditional republican distrust of the judiciary. And last but not least, a unique control of the constitutionality of acts, established by the Fifth Republic, was adjusted to the republican tradition. A preventive control still predominates, which means that the law of the Republic may not be challenged *ex post facto*. The request for the constitutional review made by individual, provided for in the amendment of 2008, is not an open constitutional complaint and may be effectuated only when the request is addressed to the Constitutional Council through the Council of State or the Court of Cassation. Finally, the principle of indivisibility of the Republic guards the Unitarian French system and determines the limits for the increase of competence of the territorial self-government.

Something I consider a negative aspect of the republican tradition may inspire studies on the function of the principal constitutional rules and identity. Undoubtedly, the principle of the sovereignty of the nation and indivisibility of the French Republic enjoy a unique status. They determine the internal cohesion of the constitution, its identity in external relations, and relationships between the French constitution and the European law. Thus the Fifth Republic proves vitality of the republican legal tradition.

Bibliography

- Agulhon, M. (1990), *Histoire de France. La République, 1880 à nos jours* (vol. 5). Paris: Hachete.
- Aron, R. (1997), *Esej o wolnościach*. Warsaw: Fundacja Aletheia.
- Bardoux, J. (1936), *Comité Technique pour la Réforme de l'État, La France de demain. Son gouvernement, ses assemblées, sa justice*. Paris: Sirey.
- Baudson, G. (1994), *L'Europe des Apatrides* (p. 39). Paris: de Luynes.
- Bigaut, C. (2000), *Le réformisme constitutionnel en France (1789-2000)*. Paris: La Documentation française.
- Bloch, M. (2008), *Rachunek sumienia Francuza*. In: M. Bloch, *Dziwna kłeska*. Warsaw: Oficyna Naukowa.
- Boucher, D. (2003), *Rousseau*. In D. Boucher and P. Kelly (Eds.), *Political Thinkers: From Socrates to the Present*. Oxford: Oxford University Press.
- Capitant, R. (1954). *Le conflit de la souveraineté parlementaire et de la souveraineté populaire en France depuis la Libération*, *Revue Internationale d'Histoire politique et constitutionnelle*, No. 14 avril-mai, pp.153-169.
- Carcassonne, G. (2007). *La Constitution*. Paris: Éditions du Seuil.
- Carré de Malberg, R. (1931). *Considérations théoriques sur la question de la combinaison du référendum avec le parlementarisme*. R.D.P.
- Conseil-Constitutionnel, (2006). Decision n° 2006-540 DC dated July 27th 2006, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2006540DCen2006_540dc.pdf, 27.09.2016.
- Constantinesco, V. and Pierré-Caps S. (2004). *Droit constitutionnel*. Paris: Presses Universitaires de France.
- De Gaulle, Ch. (1968). *Pamiętniki wojenne*. Vol. III. Warsaw: Wydawnictwo MON.
- Delsol, Ch. (2011). *Parę zapisków o republice francuskiej*. In: Ch. Delsol, *Idee republikańskie*. Warsaw: Fundacja Res Publica.
- Documentation Francaise, (2008). N. Sarkozy. *Discours d'Epinal du 12 juillet 2007*. In: Documentation Francaise, *La Constitution française du 4 octobre 1958 après la révision de juillet 2008* (pp. 52-54). Paris: La Documentation Française.
- Droin, N. (2009). *Retour sur la loi constitutionnelle de 1884: contribution à une histoire de la limitation du pouvoir constituant derive*. RFDC, No 80.
- Duez, P. (1929). *Le contrôle juridictionnel de la constitutionnalité des lois en France. Comment il convient de poser la question*. In: M. Hauriou, *Mélanges*. Paris: Sirey.
- Duguit, L. (1921). *Traité de droit constitutionnel chapters V - Le problème de L'état) and VI - La conception réaliste de L'état*. Vol 1. Paris: Ancienne Librairie Fontemoing and Cie.
- Duhamel, O. (1986). *Discours de Bayeux 16 juin 1946*. In: F. Châtelet, O. Duhamel and E. Plisier (Eds.), *Dictionnaire des œuvres politiques*. Paris: Presses Universitaires de France
- Duverger, M. (1974). *La monarchie républicaine (ou comment les démocraties se donnent des rois)*. Paris: Laffont.

- Esmein, A. (1928). *Traite de droit constitutionnel*. Paris: Sirey
- Favoreu, L. and Philip L. (2007). *Les grands textes du Conseil Constitutionnel*. Paris: Dalloz
- Filipowicz, S, Gładziuk, N. and Józefowicz, S. (1995), *Republika. Rozważania o przemianach archetypu*. Warsaw: ISP PAN.
- Furet, F. (1989). *La Révolution: de Turgot à Jules Ferry, 1770-1880*. Paris, Hachette.
- Furet, F. (1994). *Prawdziwy koniec rewolucji francuskiej*. Kraków: Społeczny Instytut Wydawniczy Znak.
- Garlicki, L. (1993). *Rada Konstytucyjna a ochrona praw jednostki we Francji*. Warsaw: Wydawnictwo Sejmowe.
- Godechot, J. (1970). *Les Constitutions de la France depuis 1789*. Paris: Garnier-Flammarion
- Grzybowski, K. (1947). *Demokracja francuska*. Kraków: Czytelnik.
- Izdebski, H. (1990). *Francja*. In L. Garlicki (Ed.), *Sądownictwo administracyjne w Europie Zachodniej*. Warsaw: PWN
- Jellinek, G. (1905). *Deklaracja praw człowieka i obywatela*. Warsaw: Księgarnia Powszechna
- Kubiak, A. (1993). *Francuska koncepcja kontroli konstytucyjności ustaw*. Gdańsk: Uniwersytet Gdański.
- Longchamps de Bérier, F. (1962). *Kontrola Rady Stanu nad administracją we Francji*. *Kontrola Państwowa*, No 5.
- Lucaire, F. and Conac, G. (Eds.) (2008). *La Constitution de la République Française. Analyses et commentaires*. Paris: Economica.
- Maritain, J. (1938). *Trzej reformatorzy: Luter, Descartes, Rousseau*. Warsaw: Verbum.
- Maritain, J. (1993). *Człowiek i państwo*. Kraków: Społeczny Instytut Wydawniczy Znak.
- Maus, D. (1998). *Discours prononcé par le général de Gaulle, place de la République, le 4 septembre 1958*. In Maus D., *Les grands textes de la pratique institutionnelle de la Ve République*. Paris: La Documentation Française.
- Maus, D. (1998). *Discours de M. Michel Debré devant le Conseil d'Etat le 27 août 1958*. In Maus D., *Les grands textes de la pratique institutionnelle de la Ve République* (pp. 2-8). Paris: La Documentation Française.
- Michel, H. and Mirkine-Guetzévitch, B. (1954). *Les idées politiques et sociales de la Résistance* (p. 47). Paris: Presses Universitaires de France.
- Morabito, M. and Bourmaud D. (1996). *Historia konstytucyjna i polityczna Francji (1789-1958)*. Temida, No 2.
- Ohnet, J.-M. (1996). *Histoire de la décentralisation française*. Paris: L.G.D.J.
- Perrot, R. (1991). *Le conseil supérieur de la magistrature*. *La Justice, „Cahiers Français”, La Documentation française*, No 251.
- Piasecki, A. (1928). *O parlamentaryzmie III Republiki*. Poznań: Fiszer i Majewski.
- Pietrzyk-Revees, D. (2010). *Republikańska koncepcja umowy społecznej*. In Z. Rau, and M. Chmieliński (Eds.), *Umowa społeczna i jej krytycy w myśli politycznej i prawnej*. Warsaw: Scholar.
- Poulat, E. (1987). *Liberté, laïcité. La guerre des deux France et le principe de la modernité*. Paris: Le Cerf-Cujas.
- Ptak, M. J. and Kinstler, M. (1999). *Ustawa Le Chapelier z 14 czerwca 1791 r.* In Ptak M. J. and Kinstler M. (Eds.), *Powszechna historia państwa i prawa*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.
- Quermonne, J. L. (1992). *République*. In O. Duhamel and Y. Mény (Eds.), *Dictionnaire constitutionnel*. Paris: Presses Universitaires de France.
- Rémond, R. (1985). *L'anticléricisme en France, de 1815 à nos jours*. Brussels: Complexe.
- Renoux, T. S. (1992). *L'autorité judiciaire*. In D. Maus, I. Favereu and J.-L. Parodi, *L'écriture de la Constitution de 1958. Acte du colloque du XXX anniversaire Aix-en-Provence 8, 9, 10 septembre 1988*. Paris: Economica.

- Séguin, P. (1988). *Oui, nous voulons l'Europe, mais debout*. In M. Mopin, *Les grands débats parlementaires de 1875 à nos jours* (pp. 311-321). Paris: La Documentation française
- Sieyès, J. (1989). *Qu'est-ce que le Tiers État?* Paris: Flammarion.
- Starzewski, M. (1928). *Środki zabezpieczenia prawnego konstytucyjności ustaw*. Krakow: Krakowska Spółdzielnia Wydawnicza.
- Starzewski, M. (1928). *Środki zabezpieczenia prawnego konstytucyjności ustaw*. Krakow: Krakowska Spółdzielnia Wydawnicza.
- Strzeszewski, C. (1985). *Katolicka nauka społeczna*. Warsaw: ODISS.
- Szlachta, B. and Pietrzyk-Reeves, D. (2004). *Republika*, In B. Szlachta (Ed.), *Słownik społeczny*. Krakow: WAM.
- Tocqueville, A. (1996). *O demokracji w Ameryce*. Vol. I. Krakow: Społeczny Instytut Wydawniczy Znak.
- Tocqueville, A. (1994). *Dawny ustrój i Rewolucja*. Krakow: Społeczny Instytut Wydawniczy Znak.
- Wojtczyk, K. (2008). *Europeizacja V Republiki Francuskiej*. *Przegląd Sejmowy*, No 5.
- Wójtowicz, K. (2010a). *Rola sądów konstytucyjnych w tworzeniu zintegrowanej europejskiej przestrzeni prawnej*. In A. Frąckowiak-Adamska and R. Grzeszczak (Eds.), *Europejska przestrzeń sądowa. L'espace judiciaire européen*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.
- Wójtowicz, K. (2010b). *Poszanowanie tożsamości konstytucyjnej państw członkowskich Unii Europejskiej*. *Przegląd Sejmowy*, No 4.
- Vedel, G. (1990). *La continuité constitutionnelle en France de 1789 à 1989*, *RFDC* 1990, No 1.
- Vimbert, Ch. (1992). *La tradition républicain en droit public français*. Paris: LGDG.