

Socialists and the institutions of the Fifth Republic

Towards a new institutional paradigm

"I think it is possible to convince people that our institutions are running out of steam, and that they need to be changed. That in this new relationship with the presidential and legislative branches, there is enough to build a new relationship with our partners. »
Speech by Olivier Faure to the National Council of the Socialist Party - September 13, 2020)

The Socialist Party has no doctrine on questions concerning the functioning of our political institutions. Certainly, it always asserts itself as an ardent defender of the rights of Parliament in the face of the encroachments of the executive power. But when the Socialists are in power, they seem to adapt very well to French-style presidentialism, and to the domination of the executive power over the legislative power that so characterizes the functioning of our institutions. In our opinion, more than opportunistic behavior, it is an embarrassment, even a deep unease with respect to a situation they have largely contributed to creating.

However, there is an urgent need to reconsider the issue. The system as it currently operates appears to be out of breath. French-style presidentialism", that is, the almost absolute power given to a single man (or woman), is now contested on all sides. This hyper-presidency has a consequence that is now obvious to us: the weakening of the presidential function. Emmanuel Macron is master of everything, but he no longer masters much, except perhaps the workings of the State. This is not enough to govern a people. In this debate, it is the very quality of the country's governance that is at stake.

In order to move forward on this issue, socialists must first examine their conscience, and look lucidly at what has become of French democracy over the last twenty years, following an evolution of which they have been - alas! - the main initiators. Indeed, the Socialists have (1) decided on the presidential quinquennium, (2) reversed the electoral calendar, and (3) invented the primary for the presidential election. In other words, they opted for the excessive presidentialization of our institutions. Emmanuel Macron represents, in a way, the ultimate and almost paroxysmal completion of this process: a political movement created around one man, and for one man alone; a man who is almost providential, who came from (almost) nowhere, and who openly takes himself for Jupiter; a man alone who decides everything, and who communicates alone about what he decides alone, with only one true interlocutor: the media. This is where we have come to.

For the socialists, the prospect of a return to power is now very distant, which should allow us to reflect calmly on these questions, and in the most serene way possible. With only one course of action: respect for our values and the affirmation of our convictions. But in order to move forward, we must above all start by having clear ideas and knowing in which direction we want to go.

Let us begin by asking ourselves the only question that is worth asking, and that commands everything else: what kind of institutional regime best corresponds to our democratic ideal? The other questions (the electoral calendar, the right of dissolution, Article 49.3, proportional representation, etc.), important though they are, are subordinate, and in fact derive from the answer to this first question. What do the socialists want? What corresponds best to (or comes closest to) their democratic ideal? This is the first question, the only question that matters. To begin with, let us quote this sentence by Pierre Mendès-France in his book, *La République Moderne*: "*For a people, entrusting its fate to one man, even if he is the best of all, is resignation.*" In writing these lines, Mendès-France obviously had in mind the person of General de Gaulle. Today, we are obliged to have in mind the person of the young and seminal Macron. This is no longer a resignation, it is a democratic shipwreck.

In our opinion, there is little doubt that the vast majority of socialists share Pierre Mendès-France's point of view. The people entrust their fate not to an individual, but to their representatives who themselves designate, by a vote of investiture, the government of France. This government is politically responsible only to those who have invested it. We have just given the definition of a parliamentary regime. It is neither a view of the mind, nor a utopia, nor a uchrony: it is the regime that exists in all European countries, ... except France.

Except France? Actually, things are a little more complicated. Indeed, the Constitution of the Fifth Republic is of parliamentary inspiration. It is even strictly parliamentary in essence, if one sticks to the letter: the Government is invested by the National Assembly, and it is politically accountable only to the National Assembly. We are well aware of this, since we have had three experiences of cohabitation over the last thirty years (1986-88, 1993-95, 1997-2002) where institutions have functioned in a strictly parliamentary configuration. Moreover, during each of these three periods, the government, with a majority supporting it in the National Assembly, was perfectly able to conduct the affairs of France and implement its policies, without the President being able to oppose them.

Unfortunately, these periods - known as periods of cohabitation - appear to many to be an anomaly or, at least, an occurrence to be avoided if possible, because they would introduce an antagonistic duality at the executive level between the President and his Prime Minister. But why this antagonism, since the respective roles of the President (who arbitrates) and the Prime Minister (who governs) are perfectly defined by the Constitution precisely in order to avoid conflicts of competence? Quite simply because the Right wanted to impose, from the beginning of the Fifth Republic, a political paradigm (which can be called the "*Gaullist paradigm*") according to which institutions are only supposed to function properly, and effectively, if there is a presidential majority in the National Assembly, that is, a majority that is constituted in the National Assembly not on the basis of a government program carried by one or more political parties, but to support the action of the President of the Republic. Everything else follows from this, including the practice not written in the Constitution, but perfectly logical in this configuration, of the Prime Minister becoming politically accountable to the President of the Republic.

It so happens that socialists have adopted this Gaullist paradigm in their practice of power. Thus, with the dissolution of the National Assembly in 1981 and 1988,

François Mitterrand built himself a presidential majority, and functioned according to this configuration (including a Prime Minister who was politically accountable to him alone, and not to the National Assembly). Similarly, Lionel Jospin, by implementing the reform of the quinquennium and the reversal of the calendar, completed the locking of the system, with the legislative election being only a tail end of the presidential election, intended to give a majority to the newly elected President. In the end, such a system gives one man "almost absolute" power, to use the expression of François Hollande, who knows what he is talking about.

It is therefore necessary for the Socialists to return to the sources of their political commitment, and to rediscover the values that were theirs at the beginning of the Fifth Republic when they opposed the "personal power" of General de Gaulle. To do so, they must affirm their own institutional paradigm, which we will call socialist and republican: the return to a strictly parliamentary application of the institutions of the Fifth Republic. In the National Assembly, only a government majority (not a presidential majority) can be formed, and the President of the Republic is confined to the role assigned to him by the Constitution: arbitrator and "keystone" of the system. Contrary to an idea that is too widely held, the election of the President of the Republic by universal suffrage is in no way incompatible with the parliamentary practice of our institutions, since it does not alter the balance of power in any way. François Hollande wrote in his recent book (*"Les leçons du pouvoir"*) that the Constitution has ceased to be parliamentary since the President is elected by universal suffrage (page 43). This is an absurdity: the episodes of cohabitation show that the Constitution can function in a strictly parliamentary way with a President elected by universal suffrage. This is the case in Portugal, a parliamentary democracy whose constitution has great similarities with ours. Moreover, it is hard to see why, at a time when it is considered highly desirable to consult citizens on matters that concern them (see the very popular idea of "citizens' referendums"), they would not be consulted directly to designate the head of state without changing the parliamentary nature of the regime.

But how to proceed? In this case, we must keep it simple, keep it simple, keep it simple. We must therefore avoid any attempt to reform our Constitution. Above all, let us not go back on what has already been decided by the sovereign people in 1958 (the Constitution), in 1962 (the election of the President by universal suffrage) and in 2000 (the five-year term). It would be too difficult to explain, and the socialists would fail. In the same vein, let us absolutely ban the theme of the Sixth Republic, which needlessly dramatizes the debate and is nothing more than a ritual invocation and an excuse for doing nothing. Our institutions, such as they are, allow for parliamentary practice; it is only necessary to ensure that this is so. To do so, there is only one solution: to put the legislative election back at the center of French political life, and to affirm loud and clear that the concept of a "presidential majority" is null and void for socialists: in the National Assembly, there can only be a "government majority". In other words, the electoral calendar must be reversed. A presidential election following a legislative election that has already decided how France will be governed can no longer claim to determine the course of French politics. It will limit itself to designating a President of the Republic, whose function of arbitration will be in some way sacralized, but without claiming to give the direction of French policy, which remains the sole domain of the Government.

For some time now, this idea has been gaining ground, as it can be easily implemented by an organic law. It has already been presented to the 2012 Congress through a thematic contribution (signed by about 50 FFE activists). It has been developed by the constitutionalist Pierre Avril, in an article noticed in *Le Monde* of September 18, 2014 ("*Why we have to go back on the inversion of the electoral calendar*"). It was taken up again by a working group of the Socialist Party itself, in June 2016, in its proposals for a reform of the institutions (proposal 19); an excellent work of reflection, unfortunately largely unnoticed. The same proposal is found in the conclusions of the Working Group instituted by the National Assembly and chaired by Claude Bartolone and Michel Winock ("*Rebuilding Democracy*", 2015). Let us quote page 84 of this report (which pronounces itself in favor of a return to the presidential seven-year term): "*if the five-year term is maintained, the working group therefore wishes to see the electoral calendar re-inverted so that legislative elections take place before the presidential election.* »

It is not a question of belittling the presidential function, but of putting it back in its place, which is - and will remain - eminent: the president-arbitrator, but he does not govern. He is the "keystone" of our institutions. He makes our political system stand upright in all circumstances (which are sometimes chaotic). Above all, this reform would be in keeping with the parliamentary essence of the institutions of the Fifth Republic, which has manifested itself especially during the various episodes of so-called "cohabitation": it is the legislative election that ultimately dictates how the country will be governed. This is still true today: if the LaRem deputies revolted against Macron and rejected his policies, he would lose power. All the more reason to give this election its rightful pre-eminence.

Having settled this first question, we will of course have to address the other recurring questions that arise on the functioning of our institutions. For example, Article 49.3, the right of dissolution, the voting system (uninominal and/or proportional). These issues are obviously crucial, and cannot be ignored: a government must have the means to govern; the President must have the means to exercise his arbitration function; legislative elections must produce a majority government. But we believe that these issues must be examined in the light of our fundamental choice in favor of a parliamentary system. And for the time being, "*first things, first!*", let us put legislative elections back at the center of French political life.

Apart from its justification in substance, which is sufficient in itself, the affirmation of this institutional doctrine would be timely to accompany the current political line of the Socialist Party. We are in fact engaged in a process of rallying and uniting with the other forces of the left, especially in view of the upcoming presidential elections. In his last speech to the National Council (September 13, 2020), the ^{1st} Secretary indicated a method: discussion on the substance, in the perspective of a political agreement, prior to the choice of a common candidate. We do not see how the discussions with our partners on the left could miss these institutional issues. And since we want an agreement on the substance, that we seek union rather than disunity, we are convinced that the institutional positions we advocate are likely to bring the points of view closer together.

Motion presented by the Washington Chapter