



# Explore the Development of Constitutionalism from the Change of French Constitution

Jing Zhao<sup>(✉)</sup>

Law School of Yanbian University, Jinan, China  
zhaoarmy25@163.com

**Abstract.** From the first constitutional document in 1789 to the present, the French constitutional system has been continuously inherited and developed, thus exploring a more complete constitutional system. This paper will explore the laws and inspirations of the establishment of the constitutional system from the changes and development of more than a dozen French constitutions, so as to summarize the experience that can be learned from the improvement of the constitutional system in China. The establishment and improvement of the French constitutional system requires correct theoretical guidance and practice, and the establishment of a rational constitutional system oriented to meet the interests of the class.

**Keywords:** French Constitution · historical changes · constitutional system · inheritance and innovation

## 1 Introduction

Since the outbreak of the French Revolution in 1789, the French constitution has undergone several changes due to social changes. As a typical civil law country, France insists on safeguarding the interests of the bourgeoisie, and again based on constant innovation to safeguard the interests of the people. That is, “the frequent constitution-making in French history is an important sign of the instability of the system of government, and the instability of the system of government is the direct cause of the hasty constitution-making, and the two complement each other, reflecting each other” [1]. Here we will explore the development of French constitutionalism by looking at the evolution of the French system of government.

## 2 Constitutional Changes

The frequent constitutional changes in France between 1789 and 1870 also reflect the inevitability of the growth and development of the bourgeois class and the necessity of the withdrawal of feudalism from the stage of history. Before 1789 the French Republic was under a feudal monarchical dictatorship. The oppression of the Bourbon dynasty plunged the vast majority of the French people into dire straits. Although the process of basicist economic development took off, under the feudal system, it was suppressed by

the feudal economy, and it was difficult to realize the interests of the early bourgeoisie, which, together with the prevalence of feudal ideology in Europe and the strict hierarchy of clergy and nobility, led to serious class conflicts. With a group of thinkers advocating the liberation of ideas, France welcomed the arrival of the “Enlightenment” and people collaborated to carry out the French Revolution.

## 2.1 Reasons for Constitutional Change

“The Revolution left a rich legacy, but it also convinced the whole of France that, whether revolutionary or counter-revolutionary, only violence was the decisive form of political struggle” [2]. The Constituent Assembly issued the “August Act” which “abolished all old obligations”, followed by the adoption of the famous “Declaration of Human Rights”, which solemnly proclaimed to the world the principle of “freedom of the person, equality of rights The principle of “freedom of the person and equality of rights” was solemnly proclaimed to the world. “The French, who had started a revolution for a constitution, were now surprised to find that it could not be applied in France” [3]. The core of the “Declaration of Human Rights” is the regulation of people’s rights and their protection, which takes the protection of human rights as the starting point and provides the principles for the construction of state power and the rule of law. The Revolution brought about a reform of the constitutional system, but its effects were twofold: the political instability and the many changes of power led to a state of confusion in which the constitutional system could not be fully defined. The short turnover time from the Jacobins to the Hot Moon Party to Napoleon’s coming to power, and the promulgation of the constitution in order to defend the interests of the different classes represented, were the important reasons for the frequent changes of the constitution.

## 2.2 Evolution of the Government System

The Constitution is the fundamental law of a country, but the frequent establishment of the Constitution destroys the stability of the nature of the Constitution to a certain extent, resulting in some legal contents not being familiar with by people. Finally, the authority of the Constitution is also challenged. Before 1875, “the evolution of the constitution and the system of government was almost identical: first a limited monarchy (or constitutional monarchy), then a republic, and finally a monarchy (or imperialism). As Divine concluded perceptively, the constitutional monarchy attempted to slow down the democratic process, democratic forces overthrew it and established a republic, which eventually fell into a coup d’état and a dictatorship was formed” [1]. Perhaps the pattern of change during this period is clearly illustrated by the description of the “waltz of the French constitution” used by some scholars: “Between 1789 and 1870, the evolution of the constitution showed two distinct but similar curves of the times, rather than a progressive one. The first curve takes its point in 1789 and ends in 1814; the second takes its point in 1814 and ends in 1870. Between the respective points of the two curves, we find an almost identical evolution of constitution and system of government: first a limited monarchy (or constitutional monarchy), then a republic, and finally a monarchy (or empire)” [1]. The outbreak of the French Revolution brought about the construction of the modern French legal system.

As the basis of the national legal system, the form and type of the constitution determine the expression of the national legal system. Since the Revolution, many French constitutions have been promulgated in the form of statute law. Whenever a new political power came to power, the implemented constitution was established in the form of a text and a separate code to ensure the authority of the law and the legitimacy of power. The main reason for France's choice of a codified constitutional code was that France had been influenced by Roman law since the French dynasty and had a habit of codifying it. After the outbreak of the Revolution, France enacted many single decrees. As an important symbol of France's progress toward a modern state, the constitution naturally chose first the form and type familiar to the French. Of course, the choice of the French constitutional form type was not only caused by its own tradition, but also the difference in the form and purpose of the British and American constitutions was the reason why the French revolutionaries chose the American constitutional type.

The Magna Carta, the Bill of Rights and the Act of Succession to the British Throne were not a complete law, but a partial and comprehensive one. They were the product of a compromise between the British people and the Crown. The heart of the British constitutional system lies not in the letter, but in the life of the millennium. The radical revolutionary demands of the French people made it impossible or inevitable that they would abandon the English form of the constitution. Second, similar to the United States, France gained its freedom through violent revolution. The Constitution of 1787, the world's first relatively complete written bourgeois constitution, preceded the vassal states, and the French people had a tradition of codification, and the creation of a Constitutional Code was an inevitable choice for them. Although unlike the U.S. Constitution, France had a large number of constitutions, its constitutional form remained unchanged.

### **3 Change of Constitutional System**

From the Third French Republic to the Constitution of the Fifth French Republic, the system of government was more stable, and the constitutional system also tended to be stable and sound continuously. As the French economy grew stronger and people's social life developed, the shortcomings of traditional parliamentary legislation gradually emerged, and in order to better adapt to the development of social needs, it proposed creative legislation, that is, "to authorize the government, within a specified period of time, to The Constitution of 1875 has been in force for more than sixty years, and is one of the longer codes in French constitutional history.

#### **3.1 Influence of the Popular Movement**

Some scholars have explored the reasons for this: "In France after the promulgation of the Constitution of 1875, the phenomenon of frequent constitutional changes had changed, despite the constant changes in the cabinet under the multi-party system, which was the inevitable result of the development of bourgeois democratization and the growing maturity of the French bourgeoisie and the expansion of class power; in addition, it was also due to the growing desire of the French working people for a lasting and stable The

revolutionary movement and the class struggle were slowed down by the growing desire of the French working people for a peaceful life” [5].

After gaining independence after the war, in order to stabilize the social order and post-war reconstruction, France promulgated the Constitution of the Fourth Republic in 1946, which reaffirmed the Declaration of Human Rights and the basic institutions of the state, and the Constitution became a relatively complete system, but it still adhered to the system of “strong parliament and weak government”, which was eventually abandoned by the development of the times. In 1958, the Algiers riots took place. The National Assembly was forced to grant General de Gaulle full powers and entrusted him with the task of drawing up a new constitution, which was adopted by referendum in September and the French Fifth Republic was established. France promulgated the Constitution of the Fifth Republic, the central feature of which was “the strengthening of law enforcement powers, the limitation of legislative powers, and the establishment of constitutional review” [6].

If the United States was founded by a popular war of independence, the popular movement had a more direct and far-reaching impact on the birth and development of the French Constitution and the establishment and evolution of the constitutional system. The advanced Enlightenment ideas and the institutional design of the political elite could only be realized by the powerful force of the popular uprising to destroy the old forces. Once the rule of a certain class reached a dead end, it was always completely overthrown and renewed by popular uprisings without leaving any trace. Such frequent revolutionary movements are rare in the world, and often at critical moments in the life and death of a revolution, popular uprisings save the revolutionary situation and promote the progress of the constitutional system. Although the tremendous reforming power of the popular uprisings destroyed the old system and created the birth and development of the Constitution, their destructive and blind character, lacking rational guidance, often made the revolutionary movement an emotional outlet for violence and fell into the trap of “revolution for revolution’s sake”. We do not deny the significance of the Revolution in launching the modern constitutional system.

### **3.2 Revolutionary Constitutionalism**

We also take the declaration of the Rights of Man and the Constitution of 1791 as the starting point of the constitutional system. However, French politics before 1875 was marked by a turbulent wave of violent revolutions and military coups. Constitutional development during the revolutionary period was full of bloodshed, and every advance in the fight for rights was accompanied by massive popular sacrifice. In the midst of constant destruction and reconstruction, the direction of constitutional construction was constantly explored, not without courage to push back, but with insufficient rational thought and understanding. After 1875, the constitutional system was basically widely recognized. The old forces could not stop the progress of the times.

Constitutionalism had become a consensus on the way politics was run and power was distributed. Revolutionary enthusiasm waned, but increased rationally. The understanding of constitutionalism gradually escaped the haze of violent revolution, and the desire for stability became the goal of constitution-making. Even if the Fifth Republic completely overthrew the system of the Fourth Republic, it was a smooth reform based on

the inherited constitutional tradition. The preamble of the Fifth Republic's constitution clearly expressed respect for the rights recognized in the preamble of the Fourth Republic's constitution. This changed the former Constitution's negation and abandonment of the former Constitution and explained the transformation of the constitutional system from emotional destruction and reconstruction to rational inheritance and construction. This evolution of the constitutional system responded to society's quest for stability. The revolutionaries also infused French idealism into the concept of the constitution. During the revolution, they firmly believed in Rousseau's moral ideals and that politicians should maintain a high level of political awareness and strive for an egalitarian and fraternal state; we were confident that the masses of people would abide by the provisions of the contract.

The French constitutional ideology embodies the revolutionaries' beautiful pursuit of politics. In their continuous practice, the revolutionaries improved the setup of state power institutions, integrated political and legal ideas, distinguished legality and illegality with the constitution; and established a good state order by restraining organizational power with the ideological symbols granted by the constitution. The French revolutionaries, who had an ambitious vision, continued to formulate and improve the provisions of the constitution in order to achieve this goal, and learned from their failures, thus creating a reasonable and practical constitution that was in line with the actual situation in France, as the Fifth Republic is today.

## 4 Conclusions

From the constitutional changes in France, we can clearly see that its constitutional development is revolutionary, so we should draw lessons from it, and then continue to improve our constitutional system. The objective process should be the prototype of the constitutional system in social practice, then established and perfected through the processing of human reason, so that the constitution formed can have a solid social foundation and deep national spiritual support, and can be closely integrated with reality, so as to give full play to its regulatory role in regulating society. This objective path of constitutional development appeared in England, where feudal autocracy had not yet fully matured, or in the United States, where there was no tradition of feudal autocracy at all, but in France, where feudal autocracy was deeply rooted, this was obviously unrealistic.

We can conclude that a more substantive discussion of the "rule of law" is necessary to make these legal systems a powerful weapon for regulating social life and protecting fundamental rights, and to continue exploring the inherent legitimacy and rationality of the legal system itself. Only through the establishment and improvement of human reasoning can the constitution thus formed have a solid social foundation and deep national spiritual support, and be closely integrated with reality so that it can give full play to its normative role in regulating society.

## Bibliography

1. Han Dayuan. Foreign constitutional law (second edition) [M]. Beijing: People's University of China Press, 2005.
2. Wang Yanmin. A comparison and reflection on the modernization of Britain, France and Germany [J] *Journal of Theory*, 2004, (1).
3. Qian Chengdan, Chen Yixin. *The Road to the Modern State* [M]. Chengdu: Sichuan People's Publishing House, 1987.
4. Jean-Rivière Jean-Varina. *The French Executive Power* [M]. Beijing: The Commercial Press, 2008.
5. Xiao Beisheng. Historical analysis of the frequent changes of the French Constitution from 1791 to 1875 [J]. *Journal of Guiyang Normal High School (Social Science Edition)*, 2002, (3).
6. Zhang Qianfan. *French and German Constitutionalism* [M]. Beijing: Law Press, 2011: 16.
7. Cheng Peixuan. On the progressiveness and conservatism of the tortuous process of political modernization in modern France [J]. *Journal of Jiangxi College of Education*, 2003, (6)
8. Hae Cheol BYUN Fundamental principles recognized by the laws of Republic in French Constitution as Standard of constitutional review DOI: <https://doi.org/10.38176/publiclaw.2019.10.48.1.171>[J]*Public law* Volume 48, Issue 1. 2019. PP 171–193
9. V.E. Chirkin *The Modern Challenge and the Development of the French Constitution* [J] *Pravo. Zhurnal Vyssei shkoly ekonomiki* Volume 2008, Issue 1. 2008. PP 100–106
10. Wang Dan. *A study on the influence of the French Revolution on the Modern French Constitution* [D]. Shanghai normal University, 2020. DOI:<https://doi.org/10.27312/d.cnki.gshsu.2020.000194>
11. Bai Liyin. The venation and law of French constitutional change [J]. *Journal of Hebei University of Science and Technology (Social Science Edition)*, 2013 13 (03): 40–46.
12. Bai Liyin. *An Analysis of the changes of Modern French Constitution and Constitutionalism system* [D]. Shandong University, 2012.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

