

POLITICAL LANDSCAPE AND CONSTITUTIONAL CHALLENGES IN FRANCE, 2024

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French politics has its foundations in the Constitution of 4 October 1958. It was designed by Charles de Gaulle and established a regime of a semi-presidential or presidentialist type which is often presented as the guarantee of institutional and governmental stability. This structure centres on a strong power conferred on the executive with a strengthened role for the President of the Republic who is elected by direct universal suffrage. The President names the Prime Minister who in turn chooses the Cabinet from the party with majority representation in the National Assembly which body with the Senate has the legislative power.

President Emmanuel Macron was elected in 2017 and re-elected in 2022. In the light of the European election results of June 2024, President Macron dissolved the National Assembly and arranged for national elections on 7 July 2024. This was because the European election results were clearly unfavourable to President Macron's political party. The results of the national elections in July 2024 did not result in clarifying the political situation in France and in effect resulted in greater political fragmentation. A consequence of that fragmentation is the difficulty found in appointing a Prime Minister who would have sufficient support to govern France.

In this paper, Professor Guigue provides a clear and well documented analysis of the situation in France for the purpose of facilitating a good understanding of the French political events of 2024.

La politique française puise ses fondements dans la Constitution du 4 octobre 1958. Conçue par le général Charles de Gaulle, elle met en place un régime semi-présidentiel ou présidentieliste souvent présenté comme le garant d'une stabilité institutionnelle et gouvernementale. Ce régime s'articule autour d'un pouvoir fort

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conféré à l'exécutif, avec un rôle renforcé du président de la République élu au suffrage universel direct qui nomme le Premier ministre lequel compose son gouvernement choisi au sein du parti majoritaire à l'Assemblée nationale qui avec le Sénat compose le pouvoir législatif.

L'actuel président, Mr. Emmanuel Macron, a été élu en 2017 puis réélu en 2022. Au soir des élections européennes de juin 2024, dont les résultats étaient nettement défavorables au parti politique présidentiel, Mr. Emmanuel Macron prenait la décision de dissoudre l'Assemblée nationale et d'organiser des élections anticipées le 7 juillet 2024. Il espérait ainsi clarifier un paysage politique nettement fragmenté en trois grands blocs (gauche du Nouveau Front populaire, le centre d'Ensemble et la droite du Rassemblement national), situation qui entravait le bon exercice du pouvoir législatif. Cependant, les résultats de ces élections anticipées n'ont pas permis de sortir de la confusion, bien au contraire. En effet, ils n'ont fait qu'amplifier les divisions parlementaires antérieures plaçant alors la France dans une situation d'ingouvernabilité. En témoignent les difficultés rencontrées pour trouver un Premier ministre capable de rassembler une coalition qui lui permette de disposer d'une majorité parlementaire pour gouverner la France.

Alors que les institutions françaises sont depuis leur création en 1958, l'objet de la curiosité des autres pays mais aussi de leur intérêt, l'auteur à l'appui d'une analyse précise et documentée, propose à l'intention des lecteurs anglophones du CLJP, les éléments nécessaires pour la bonne compréhension des récents évènements politiques français qui restent encore souvent perçus à l'étranger, comme un symptôme d'une crise institutionnelle majeure.

I INTRODUCTION

After Charles de Gaulle, François Mitterrand and Jacques Chirac, Emmanuel Macron became the fourth French President to be elected for a second term when he defeated Marine Le Pen on 24 April 2022. This apparent success was overshadowed by disappointing results during the legislative elections which took place a few weeks later (12 and 19 June 2022). "Ensemble", the political party created by Emmanuel Macron before his first presidential campaign (initially named "En Marche" and now "Renaissance"), secured only 172 seats in the National Assembly which is composed of 577 members. Two other parties agreed to join "Ensemble" in support of the President, increasing the total number to 250, but the coalition remained 49 seats short of an absolute majority. While the gap with the other political parties remained significant (the left alliance obtained 151 seats and Marine Le Pen's National Rally 89 seats), such a result meant that the President would need the support of representatives outside his coalition to pass Bills. After appointing yet

again a Conservative Prime Minister, Elizabeth Borne, Emmanuel Macron carried out a risky political agenda. On several occasions, the Prime Minister had no other choice than to trigger the provision contained in art 49.3 of the Constitution to force the adoption of Bills. When activated, this rather unique provision puts an end to any ongoing debate on Bills in the National Assembly. Unless an absolute majority of representatives votes in favour of a no-confidence motion which must be introduced within 24 hours, the Bill may be considered as adopted and sent to the President to be signed into law. Since 2022, most financial Bills have been passed following this procedure as well as two very controversial laws: the Pensions Act and the Immigration Act.

While the 2022 elections weakened the hand of Emmanuel Macron from an institutional standpoint, his insistence on pursuing a right-leaning political agenda and pushing for more European integration distanced him further from French voters and sowed the seeds of a potential political crisis.

The first electoral test to Emmanuel Macron's second term came with the European elections, scheduled between 6-9 June 2024 (II). The results triggered a series of events that lead to a new political landscape which is putting the Constitution to the test. Macron's decision to call anticipated elections took political parties by surprise (III). The results were worse for the President than in 2022 and left the National Assembly in a deadlock (IV). Cornered, the President went on a quest to find a new Prime Minister who would not face an immediate motion of no-confidence (V). In September 2024, the appointment of Michel Barnier appeared as a compromise, despite the new Prime Minister's being a member of the one of the weakest political parties represented in the National Assembly. With the permanent threat of a vote of no-confidence and a challenging debate on the national budget round the corner, the road ahead appears very unpredictable (VI).

II THE EUROPEAN ELECTIONS (6-9 JUNE 2024) AND MACRON'S CRUSHING DEFEAT

Unlike the legislative elections which follow a two-round majority system in which candidates compete for a seat in 577 constituencies, the European elections follow a proportional system. Each French political party registers a list of candidates. The 81 seats available to French representatives are distributed proportionally, based on the percentage of votes obtained by each list, except those that obtain less than 5%. Since the Maastricht treaty which was ratified by the French Parliament following a very close referendum in 1992, European elections have reshaped political lines in France. Until Macron's election in 2017, national elections in France usually oppose left- and right-wing political parties. The narrow vote in favour of the 1992 treaty (51.04% against 48.96%) left its mark across the political

spectrum, paving the way to a new divide between those in favour of further European integration and those who reject it because it would weaken national sovereignty. More so than in 1992, the 2005 referendum on the treaty establishing a Constitution for Europe split political parties, not between left and right, but between nationalists and Europeanists. The main political parties who had controlled government for decades (the Socialist Party and the Rally for the Republic, which later became the Union for a Popular Movement and then The Republicans) campaigned in favour of a European Constitution while far-left parties as well as far-right parties, notably the National Front, fought against the treaty. The success of the latter parties (54.67% against the treaty, and 45.33% in favour) confirmed the shift from the traditional conservative versus progressive battle to an opposition between nationalism and globalism. A few years after the 2005 referendum, President Sarkozy's decision to seek Parliament's authorisation to ratify the Lisbon treaty wounded moderate political parties and strengthened the nationalist cause because it was largely seen as a reworking of the previous treaty. Since then, European elections have been met with fear by pro-European parties while the results helped the Far Left and the Far Right to establish themselves as the new dominant political parties in France. Instead of the traditional fight between the mainstream Left and the mainstream Right, even national elections like the presidential contest saw a more even distribution of the vote between not two but three political parties. The first round of the 2022 French presidential elections offers a good illustration: Macron came narrowly ahead with 27.84% of the vote. Marine Le Pen followed with 23.15%. Jean-Luc Mélenchon, the leader of the rising "*La France Insoumise*", on the far left, got 21.95%. Both two runners-up had campaigned against the 2005 treaty and opposed Macron's globalist views.

With Macron's popularity waning between 2022 and 2024 after numerous battles in Parliament like on the pension reform and the Immigration Bill, the 2024 European elections posed a significant threat to Macron's European stance. His supporters anticipated a defeat but underestimated its scale. The far-right National Rally obtained 31.4% of the vote, leaving Macron's "*Renaissance*" party with only 14.6%. Worse still, Macron's party only narrowly beat Raphaël Glucksmann's list (supported by the mainstream left) which obtained 13.8%. These results gave both parties 13 seats in the European Parliament, while Marine Le Pen's party obtained 30 seats. Jean-Luc Mélenchon's "*La France Insoumise*" obtained a disappointing 9.9%, with 9 seats. The scale of Macron's defeat was historic and most certainly weakened his position on the international scene, which came at a difficult time marked by the Ukrainian conflict and the war in Gaza.

The painful defeat in the 2024 European elections did not impact on Macron's position domestically. With his term running until 2027 and the support of a narrow majority of 250 in the National Assembly, there was no immediate reason for the President to respond domestically, except perhaps by acknowledging the discontent of French voters.

III MACRON'S CONTROVERSIAL DECISION TO DISSOLVE THE NATIONAL ASSEMBLY

A few hours after the results of the European elections became public on 8 June 2024, Macron took everyone by surprise, including his close allies, by announcing his decision to dissolve the National Assembly. There was no legal requirement for the President to call anticipated elections as art 12 of the 1958 Constitution leaves the power to dissolve entirely to his discretion. Unlike in several other parliamentary systems, the decision to dissolve is never automatic in France. It does not depend, for instance, on a majority vote in the Assembly, nor is it automatically triggered if the government is forced to resign following a vote of no-confidence, or if an election, such as the European elections or local elections, is not favourable to the parties which support the President. Article 12 simply states that "the President may, after consulting the Prime Minister and the Presidents of the Houses of Parliament, declare the National Assembly dissolved"¹. Article 19 lists the power to dissolve amongst the few presidential powers that can be used without the signature of the Prime Minister. This means that the President is the sole person responsible for the decision. His only constraint is to formally consult three political figures before announcing his decision. Although the Constitution does not say whether the President must take into account the views of the Prime Minister, the President of the National Assembly and the President of the Senate, it is understood amongst scholars and political actors that the President has the power to go forward even if all three advise against it. There is a very good reason for this: the Houses of Parliament are not always controlled by the same political parties. In the case of Macron's decision in 2024, a discussion emerged about the scope of the obligation to consult before dissolving. The Prime Minister Gabriel Attal tried to dissuade the President in the hours before the decision was made, and the President of the Senate Gérard Larcher cautioned against it. Their advice was not formally sought in writing, given the short amount of time between the election results and the announcement. This reinforced the impression that Macron's decision was discretionary.

¹ The English quotes from the 1958 Constitution are taken from the French Constitutional Council's website. <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958/>.

The history of the power to dissolve the National Assembly in France is a convoluted one. The logic underpinning the parliamentary system developed during the constitutional monarchies of 1814 and 1830, but the experience of the 3rd Republic undermined the power of the President to dissolve. After a political crisis under President Mac-Mahon, the new President Jules Grévy announced that he would never "collide with the National Assembly", which led to the gradual abandonment of the power to dissolve. The Constitution of the 4th Republic excessively limited the power, and the assemblies used the situation to their advantage, finding ways to force governments to resign without meeting the requirements that would allow the President to dissolve. It is only due to a procedural mistake made by parliamentarians that President Coty was able to call anticipated elections in 1955.

Under the Fifth Republic and until 2024, the French National Assembly was dissolved on five occasions (1962, 1968, 1981, 1988, and 1997). The first two decisions were made by President de Gaulle during a political crisis. In 1962, his decision to call a referendum on the way the President was elected was met with very strong political opposition. Representatives across the political spectrum were concerned for two reasons. They were wary of the impact the introduction of a direct election system would have on the balance of powers, and they were also outraged by the legal route de Gaulle had chosen to call the referendum. The 1958 Constitution allows the President to call a referendum under art 11 on designated topics. Under art 89, it can only be done to approve a constitutional amendment. Establishing a direct election process for the President required amending art 7. On principle, de Gaulle should have followed the legal steps prescribed by art 89 and seek the approval of both Houses before putting the question to the electorate. De Gaulle knew that his proposal would not be approved by Parliament, which is why he called the referendum under art 11. Left with no other legal means to oppose the President, the National Assembly responded by voting a motion of no-confidence, which forced the resignation of Pompidou's government. It was the first and only time that a French government would be forced to resign after the passing of a vote of no-confidence until 2024. Following the logics of the parliamentary system, de Gaulle then dissolved the National Assembly. The elections and, more importantly, the referendum, supported the President. Commentators concluded that the 1962 dissolution illustrated well the crisis-solving purpose of this power and confirmed the parliamentary nature of the French regime. The 1968 dissolution occurred in a very different context but can be described in a similar way. De Gaulle's decision came during the famous protests of May 1968 when determined students took to the streets of Paris to challenge the government. The President's decision was vindicated

by the result of the ensuing elections, and it was said that, once again, the power to dissolve was used appropriately.

Although the two dissolutions decided by Mitterrand were quite different from the ones of de Gaulle, their justification was well understood by constitutional law specialists. At the time, the length of a presidential term was seven years while the Members of the National Assembly were elected for five years. Therefore, when Mitterrand became the first left-leaning figure to be elected as President under the Fifth Republic in 1981, the National Assembly was dominated by conservative parties and the next legislative election was not due before another two years. Mitterrand decided to call early elections with the hope that the voters would show consistency and support the Socialist Party which championed him during the presidential poll. The move was successful, and Mitterrand was able to appoint socialist Prime Ministers until the next legislative election that took place in 1986. The Socialist Party was defeated, and Mitterrand felt compelled to appoint Jacques Chirac, paving the way to a rocky two-year "cohabitation" between the two political enemies. In 1988, Mitterrand was re-elected and left in the same situation as in 1981. Because his agenda was opposed by a conservative majority in the popular house, he dissolved the National Assembly for a second time. Although the result was very tight, Mitterrand was able to appoint left Prime Ministers until the end of the new legislature. As with the dissolutions decided by de Gaulle, those of Mitterrand were said to make sense in the parliamentary regime and helped reinstate it as a relevant constitutional power.

Chirac's decision to dissolve the National Assembly in 1997 marked a departure from the logics that presided over previous dissolutions. Chirac was elected President in 1995 and appointed Alain Juppé as his Prime Minister. He was able to govern with the support of a large majority in the National Assembly. While the reasons that led to him to call fresh elections in 1997 are not entirely clear, many suggested that he did not trust the conservative parliamentarians who supported Edouard Balladur instead of him in the first round of the 1995 presidential election. Nonetheless, commentators compared his dissolution to the "tactical" dissolutions of British Prime Ministers. In the United Kingdom, dissolutions are usually called in the last year of a Parliament at a time when the polls are most favourable to the majority party in the House of Commons. Unlike Thatcher who was able to use the power to her advantage and remain in power for 11 years, Chirac made a decision that backfired. His party lost to a left coalition, forcing him to appoint Lionel Jospin as Prime Minister. Unlike Mitterrand's two-year "cohabitations" between 1986 and 1988 and 1993 and 1995, the new cohabitation lasted for 5 years, until the next presidential election. While the 1997 dissolution was not presented as the main

reason why a referendum was called in 2000 to amend the duration of presidential terms, it was argued that shortening the presidential term to 5 years would make it match the term of the National Assembly, therefore limiting the need to dissolve it in the future. This caricatural reasoning had long-lasting effects on politicians and even constitutional law specialists, but it was flawed. Several reasons could cause terms not to align in the future. First, the presidential election and the legislative elections could lead to opposing majorities from the get-go. French voters could, for instance, elect a socialist President and then elect a conservative majority in the Assembly. Second, before the end of the term, a President can resign, like de Gaulle in 1969, or, sadly, die, like Pompidou in 1974. Third, it is always open to the President to call early elections. These situations can all lead to a mismatch between the President's and the Assembly's terms. For 24 years, this did not happen. The alignment of presidential and parliamentary terms even allowed presidents, from Chirac to Macron, to command a majority in Parliament. In this context, Macron's decision to dissolve the Assembly in 2024 was very risky.

Macron's 2024 dissolution is reminiscent of Chirac's. In both situations, it was not justified by a political crisis whether institutional or on the streets. Furthermore, while Macron's political party was weakened by the 2022 legislative election, the government was able to pass controversial reforms, such as the Pensions Act (2023) and the Immigration Act (2024). Of course, legislative processes were difficult and Prime Ministers were forced to use all the legal tools available to them, notably the controversial art 49.3, but a very good argument could be made against risking losing everything in a legislative election during which angry voters would be tempted to punish Macron for his controversial reforms. This certainly explains why the Prime Minister and the President of the Senate cautioned against calling anticipated elections. The results of the election proved them right.

IV THE 2024 LEGISLATIVE ELECTIONS (29-30 JUNE AND 6-7 JULY 2024) AND THE RESULTING POLITICAL IMPASSE

Macron's political party "*Renaissance*" faced an uphill battle in the lead-up to the first round of the legislative elections on 30 June 2024. A reluctant Prime Minister, Gabriel Attal, campaigned with the hope of containing the rise of the National Rally. The results of the first round came as a shock with the far-right movement leading the legislative polls for the first time. Le Pen's party obtained 29.25% while the newly created left-coalition came close second with 27.99%. In anticipation, several parties from the left had agreed to regroup under a unique banner called the New Popular Front (NFP in French) for the first round. The electoral agreement between the left parties involved a single manifesto and a strategic selection of candidates to enrol only one candidate per constituency for the entire coalition. Macron's party

came in third position, with only 20.04% of the vote. The result left the President's allies questioning his decision to call anticipated elections with the looming risk of seeing Jordan Bardella, the leader of the National Rally, becoming Prime Minister, possibly for the 3 remaining years of Macron's term. Moderate political parties reacted to the first-round results by adjusting their political strategy in preparation for the second round. Many parties asked their candidates to withdraw from the race whenever they came in third position in a constituency where the National Rally looked like it could win a seat. This strategy, known as the Republican Front (*barrage républicain*), had been used many times in the past and effectively slowed down the progress of the far-right movement. In 2024, however, observers were left wondering whether the same approach would work again. In the end, it worked quite well. Although the National Rally obtained 32.05% of the votes cast, it was only able to secure 125 seats overall, which is far from enough to form a government. The NFP coalition secured 178 seats, making it the largest movement in the National Assembly. Macron's party obtained 150 seats, 100 fewer than in 2022. Although the NFP was able to claim that it had won the largest number of seats, numerous political opponents swiftly pointed out that the NFP was nothing more than an electoral agreement and that it was left to be seen whether they would be able to form a unique political group in the Assembly. Critics were eventually proven right, each left political party from the NFP forming its own political group ("*La France Insoumise*", "*Socialistes et apparentés*", "*Écologiste et social*" and "*Gauche démocrate et républicaine*").

The distribution of seats between three blocks with none of them in a position to form a government was historic. The Fifth Republic had always seen a party, or a coalition, secure enough seats so that the Prime Minister could command an absolute majority. Not only did the 2024 election results bring back memories of the Third and Fourth Republics during which a similar division in three blocks weakened the stability of the political regime, it also left Macron with an near impossible task: finding a new Prime Minister who would not immediately be forced to resign by the Assembly.

V THE SEARCH FOR A NEW PRIME MINISTER

Article 8(1) of the French Constitution simply states that "*le Président de la République nomme le Premier ministre*". This is translated on the Constitutional Council's website as "The President of the Republic shall appoint the Prime Minister". The French version uses the present tense in a performative way without explicitly saying whether the President has the obligation to appoint the Prime Minister or whether the appointment is understood in a looser way, one in which the President is left entirely free to decide whom to appoint and when to make the

decision. These two issues (who might the President appoint?, and how long the President has to make the appointment?) came under the spotlight after the announcement of the legislative elections' results. The discretion of the appointment is confirmed by art 19 which makes it one of the few powers of the President which like the dissolution power does not require the signature of the Prime Minister. Other decisions require such a signature. The effect is to make the Prime Minister politically responsible of the decision instead of the President whose decisions may only be challenged by the High Court and only if he commits an act that is deemed incompatible with his presidential duties (art 68).

The NFP coalition thought that the results obliged Macron to appoint a Prime Minister taken from its ranks, and immediately announced that it would not accept any other option. Rather rapidly and, somewhat surprisingly, the leaders of the NFP parties agreed to push for the appointment of Lucie Castets, a civil servant working for the municipality of Paris. Her name was suggested on 23 July, and Lucie Castets started to speak to the press about her intentions as the future French Prime Minister. She confirmed her commitment to the manifesto which the left political parties had adopted before the election and made it clear that she would not be open to amending it despite the absence of an absolute majority supporting it in the National Assembly. This quickly became a problem for Macron who felt it was his responsibility to pick someone who could, if not command a majority in the Assembly, reach agreement with a very divided Assembly. This meant that Macron could not contemplate appointing someone from his own political party. On the far right, Jordan Bardella had already made it clear that he would not accept the post of Prime Minister if his political party did not secure an absolute majority in the Assembly. With an impossible task, Macron decided to take his time. On 23 July, he announced that there would be no appointment before the end of the Olympics which were about to start in the French capital.

The unilateral decision made by the President puzzled several political leaders who felt that he had an obligation to make a swift appointment. The legal dispute arose because of the wording of the Constitution which makes no mention of a time period within which the appointment ought to be made. The only constitutional argument that could be used against Macron's decision to delay the appointment was based on art 5, which states that "the President shall ensure, by his arbitration, the continuity of the State". A long delay could potentially have an impact on the continuity of the State. It could also be argued that Prime Ministers have since 1958 always been appointed quickly. The 1962 precedent during which Pompidou had resigned but was maintained as Prime Minister by de Gaulle for a month and a half does not demonstrate that the President has a free hand. At the time, the delay was

justified by de Gaulle's decision to dissolve the National Assembly. Pompidou remained Prime Minister until the results of the elections were announced.

In 2024, the situation became a bit more difficult after the Olympics. People expected an appointment, but the political deadlock left Macron scrambling for a good option. Several names were floated in the press or tested with political leaders. Many visited the Elysée Palace to discuss options with the President. By the end of the summer holidays, it became clear that more time would be necessary for Macron to make up his mind. In late August, the following message was published on the Elysée website: "the President has found that a government which would be committed to only carry out the manifesto proposed by the largest coalition in the house, and which would only rely on the political parties from this coalition, would immediately face a vote of no confidence and be forced to resign by the other political groups represented in the assembly".²

Not only was there going to be further delay before the appointment but Macron had also made his view very clear on the way he perceived his power to appoint the Prime Minister. While some scholars observed that he was under no legal or constitutional obligation to appoint anyone in particular,³ many political leaders, especially from the left, expressed fury at Macron's refusal to appoint Lucie Castets. Their understanding was that, in the absence of any constitutional obligation, it was the president's duty to appoint the person championed by the largest coalition in the National Assembly. The reasoning had its merits, but it was flawed. First, the NFP was essentially an electoral agreement between political parties during the election campaign. Once the National Assembly convened, each NFP political party went its separate way by creating its own political group in the House. It could have been argued that Macron was to appoint a person supported by the largest political group.

2 My translation. «Le Président de la République a constaté qu'un gouvernement sur la base du seul programme et des seuls partis proposés par l'alliance regroupant le plus de députés, le Nouveau Front Populaire, serait immédiatement censuré par l'ensemble des autres groupes représentés à l'Assemblée nationale.» Communiqué suite aux consultations avec les responsables des partis et les Présidents des deux chambres des 23 et 26 août 2024, <https://www.elysee.fr/emmanuel-macron/2024/08/26/communique-suite-aux-consultations-avec-les-responsables-des-partis-et-les-presidents-des-deux-chambres-des-23-et-26-aout-2024>. [consulté le 28 octobre 2024].

3 Julien Boudon, Choix du premier ministre : «Le chef de l'Etat n'a aucune obligation juridique, la logique politique prévaut», Le Monde, 09 juillet 2024, https://www.lemonde.fr/politique/article/2024/07/09/choix-du-premier-ministre-dans-notre-regime-le-chef-de-l-etat-n-a-aucune-obligation-juridique-la-logique-politique-prevaut_6248088_823448.html [consulté le 28 octobre 2024]; Dominique Rousseau, «Ne pas nommer Lucie Castets n'est pas une faute. C'est la mission d'Emmanuel Macron», 01/09/2024, <https://www.parismatch.com/actu/politique/dominique-rousseau-ne-pas-nommer-lucie-castets-nest-pas-une-faute-cest-la-mission-demmanuel-macron-241173> [consulté le 28 octobre 2024].

In that case, he would have asked Jordan Bardella to become Prime Minister, since his National Rally obtained 122 seats. The NFP's argument was rather that the Prime Minister should be chosen from the largest coalition (the NFP regrouped 182 parliamentarians in the House). But the argument is weak. If indeed the NFP was understood as the largest coalition, 182 remained far from the 289 threshold, which corresponds to the absolute majority. While the NFP's argument had its merits, no government would be in a position to govern the country if it were supported by only 182 parliamentarians. It would have been at the mercy of opposition parties. A motion of no confidence would immediately be passed and force the Prime Minister to offer the resignation of its government to the President. In a country like Germany or Spain where the Prime Minister must be confirmed by a majority vote in the House after the appointment, such a government would not survive.⁴ But the French system is very different and unique. Article 49(1) makes it optional for the Prime Minister to ask for a confirmatory vote following a political declaration in the House. The absence of a mandatory vote leaves the President as the sole arbiter. This explains why Macron pondered, consulted political leaders, suggested names and took his time before reaching a decision. Each option was evaluated and tested with group leaders. In this context, Marine Le Pen, the leader of the far-right movement, was seen as weighing heavily on the process. By suggesting that the parliamentarians from the National Rally would vote down any Prime Minister from the left, she was able to influence Macron's decision and possibly, dissuade him from appointing a progressive figure.

Yet, several scholars and political advisors observed that appointing Lucie Castets, for instance, and seeing her resign following a vote of no-confidence might have been one way of settling the dispute. If she were forced to resign by a majority of the members in the House, it would have been difficult to blame Macron for then appointing a conservative figure. Instead of following this shaky political path, the President preferred to find for a person who stood a chance to last more than a few days in the Assembly. After nearly two months of searching, Macron announced on 5 September, his decision to appoint Michel Barnier. The experienced conservative politician who represented the European Commission in the Brexit negotiations was seen as a compromise. It seems that Macron obtained Marine Le Pen's assurance that the National Rally would not immediately vote to remove him from office. The appointment was met with disarray on the left as Barnier belonged to a conservative

4 Olivier Beaud, *La fin du pouvoir discrétionnaire du Président en matière de nomination du Premier ministre*, Le Blog Jus Politicum, 28 août 2024, <https://blog.juspoliticum.com/2024/08/27/la-fin-du-pouvoir-discretionnaire-du-president-en-matiere-de-nomination-du-premier-ministre-par-olivier-beaud/> [consulté le 28 octobre 2024].

party, "*Les Républicains*", which obtained only 5.41% of the votes cast in the second round of the legislative elections, and a total of 38 seats out of the 577 seats available. Without a formal coalition between Macron's "Renaissance" and The Republicans, the National Rally decided to give Barnier a bit of time before a possible vote of no confidence. He was given a chance to present his political priorities in Parliament.

VI THE DIFFICULT ROAD AHEAD

In the days following his appointment, Barnier worked on the formation of his government and showed some determination not to simply follow Macron's preferences. He proposed several conservative Ministers which infuriated the left. Rather than presenting his political agenda under the procedure described in art 49(1) which would allow a vote to take place, he decided to make a declaration in the House under art 50-1.⁵ As predicted, only members of the NFP parties voted on a motion of no confidence and Barnier's government survived. The next major challenge to the new government was the budget. With a late appointment, Barnier had little time to work on a financial Bill and send it to the National Assembly before the first Tuesday in October, as required by art 39 of the Institutional Act of 2001 on financial Bills. In the past, the Constitutional Council had shown flexibility with the deadline, deciding that a delay would not automatically make the Bill unconstitutional. The delay, according to judges, had to be balanced with the overall amount of time given to the House to debate the Bill.⁶ Provided lawmakers were given 70 days to consider the Bill. The Council would not dispute the constitutionality of the Bill. In the end, the Financial Bill for 2025 and all other mandatory documents and reports were submitted to Parliament on 12 October. This gave Parliament until 21 December, to vote on the Bill, leaving a few more days for the Constitutional Council to review the constitutionality of the Bill if asked by the President, the Prime Minister, the President of either House, or by 60 members of the National Assembly or 60 Senators.

With the issue of timing under control, the main problem for the government, as at November 2024, is to secure the support of a majority of the members of the National Assembly. The support of the Senate is not detrimental to the passing of the Bill since the Constitution allows final say to the National Assembly. Financial Bills are often signed into law despite the Senate's opposition. In 2024, the issue was

5 "The Government may, before either House, upon its own initiative or upon the request of a political group, as set down in article 51-1, make a declaration on a given subject, which leads to a debate and, if it so desires, gives rise to a vote, without making it an issue of confidence."

6 Cons. const., 82-154 DC du 29 décembre 1982, §2; Cons. const., 97-395 DC du 30 décembre 1997, § 4 et 5; Cons. const. 25 juin 2001, n°2012-658 DC, §73 et s.

of a different kind. Never under the Fifth Republic has the House been so divided. In this political context, passing any Bill is close to an impossible task, even if Prime Ministers retain the power to try and force Bills through. Article 49(3) allows them to put their resignation on the table and consider the Bills as adopted if a motion of no confidence is not passed. Elizabeth Borne, who served as Prime Minister between 2022 and 2024, used this provision to pass the 2023 budget as well as the 2024 budget. On both occasions, members of the assembly were not able to pass a motion of no confidence. In autumn 2024, Barnier's government appeared more exposed than ever because of the Assembly's strident divisions.

The other pressing challenge for the Prime Minister is the dire state of the public finances. In October 2024, it was revealed that the public deficit was far worse than predicted. It also became clear that the economic forecast models used by the Ministry of Finance were flawed. Faced with the pressing need to limit public spending as well as raise more revenue, the new government embarked on a difficult journey, knowing that it would be difficult to please the House. Even if Barnier were able to propose a compromise, he was always at risk of being forced to resign. The new political landscape makes it impossible to predict how long the new Prime Minister might be able to remain in place. And if that were not enough, Barnier must also make sure that the President remains happy with him. Although the Constitution does not formally give the President the power to dismiss the Prime Minister at pleasure, it is conventionally understood that a Prime Minister must resign when asked by the President to do so. The reason lies in the fact that the President is democratically elected by the people, which is not the case of the Prime Minister. Elizabeth Borne offered the resignation of her government at Macron's request. In the current situation, he might think twice before requesting Barnier's resignation as he would be left with very few alternatives. If Macron felt that the situation could not continue until the next presidential election in 2027, he could be tempted to wait until the summer of 2025, which is when art 12 of the Constitution would allow him to dissolve again the National Assembly.⁷ In the meantime, the stability of the French government appears precarious.

⁷ Article 12(4): "No further dissolution shall take place within a year following said election."