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Paris: Epitome or Blind Spot of the Constitutional Identity of France?

by

Giacomo Delledonne^I

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Abstract

This short piece aims to make sense of the place of Paris within the French constitutional order and to analyse the role of the capital city in defining the constitutional identity of the country. The paper is organised around two main axes: first, the specific features of the legal status of Paris within the French legal order, and second, how this contributes to shaping the constitutional identity of France

Key-words

Paris, French constitutional order, constitutional identity, Fifth Republic, metropolitan governance



1. A paradox

Unlike many other constitutions, both in Europe and elsewhere (see Häberle 1990)^{II}, the Constitution of 4 October 1958 does not make reference to Paris as the capital of the French Republic. This was also the case with the previous regimes: the capital city is not mentioned in any of the constitutions enacted since 1791.

The ‘silence’ of the Constitution of 1958 is all the more striking as Article 2 mentions a number of identity-related symbols of the French Republic, including language (paragraph added in 1992), the national emblem (i.e. the flag), the national anthem, and the motto of the Republic^{III}. In its original wording, Article 2 also proclaimed the fundamental principles of the constitutional order, which were moved to Article 1 in 1995 and further amended in 2003: ‘France shall be an indivisible, secular, democratic and social republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis’. In this respect, there is strong continuity between Articles 1 and 2 of the Constitution of 1958 and Articles 1 and 2 of the Constitution of 27 October 1946.

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2. Making sense of the Constitution’s silence

As I have mentioned in the preceding paragraph, the French Constitution is quite precise in defining the symbols of the Republic, except for the capital city. The ensuing question is how the silence of the Constitution should be interpreted. The silence of constitutional documents has been widely discussed, as it highlights ‘the inevitable and irreducible role of conventions and culture in constitutional law’ (Albert and Kenny 2018: 881). Interestingly, provisions on capital cities are one of the few exceptions to the ‘near-absolute silence of constitutions and constitutional thinkers on city power’ (Hirschl 2020: 37). Why did the drafters of the Constitution of the Fifth Republic, as well as their predecessors since the Revolution, refrain from entrenching references to the capital city? Different answers are



possible. First, in a highly centralised state the role of Paris as the political, administrative, cultural and economic hub of France^V is so self-evident that no explicit entrenchment of its role is needed. In this respect, there are similarities and differences with the *legal* status of Rome as the capital of Italy. Since the age of the Capetian kings, the emergence of Paris has gone hand in hand with the century-long process of formation of the French state (see Delpérée 1993: 132). By contrast, when the Kingdom of Italy was established in 1861, the idea that the capital of the new state would be Rome was almost unanimously viewed as ineluctable (see Luciani 2020: 1). Paris clearly embodies the continuity of the French state, also at international level, but its relevance to the constitutional order is less easy to decipher. This may open up further questions on the interaction between statehood and constitutions and their respective roles in European public law systems. In practical terms, the fact that Paris is a ‘constitutional unthought-of’ (*un impensé constitutionnel*: Chauvel and Renaudie 2022) means that the regulation of its status is reserved for ordinary legislation. In the last fifteen years, the relevant legislative framework has been frequently modified^{VI}, which suggests that the position of the city of Paris within the legal order, aside from its status as capital, is more problematic than it used to be.

A second explanation has to do with the fact that French public law has generally been very suspicious of particularism^{VII}. In fact, a closer look at the French legal order reveals that its territorial organisation is quite complex, with the coexistence of a common regulatory framework for local government authorities and the legislative entrenchment of a number of specific regimes, both in metropolitan and overseas regions (Plessix 2024: 317-318). The promotion of differentiation has been a defining feature of the legislative reforms of local government since the 2010s; still, the constitutional entrenchment of special statuses is a more delicate step, as the long-standing debate about the constitutional recognition of Corsica’s specificities shows (see, among others, Mastor 2021)^{VIII}. Therefore, the fact that the Constitution says nothing on a specific legal status for Paris *as the capital of the French Republic* may sound less surprising.

Finally, a third possible answer to the initial question is that the role of Paris as the capital of France is inherently problematic and has affected the regulation of its regime and, more generally, the attitude of the central government(s). It remains to be seen what this entails for the constitutional identity of France.



3. A complex evolution

Over the tumultuous course of French constitutional history, Paris played a crucial role from the outbreak of the Revolution until the founding years of the Third Republic. This point was powerfully presented by literary critic Albert Thibaudet in his essay *La République des Professeurs*, which was first published in 1927: 'La Révolution ce fut Paris, la Commune de Paris, la dictature de Paris. Ou plutôt les Révolutions, 1789, 1830, 1848. Tout se passait alors comme si la France eût été, comme l'Autriche d'aujourd'hui, hydrocéphale' (Thibaudet 2007: 87). In the revolutions that put an end to the *ancien régime*, the Bourbon Restoration and the July Monarchy, uprisings in Paris played a crucial part. In this respect, Tocqueville noticed that the 'Parisian omnipotence' in the political sphere was further highlighted by the centralised organisation of France (Tocqueville 2011: 75). For the same reason, however, when new regimes settled down, the municipal autonomy of Paris was viewed with suspicion. Both in 1848 and 1870, the overthrow of a monarchic regime was followed by the appointment of a mayor of Paris, as this figure was supposed to embody the emergence of a new, republican regime (Granier 1982: 119). However, in 1848, when the first stage of the democratic revolution came to an end, no mayor was elected after Armand Marrast left the office. In the mature stage of the Second Republic and under the Second Empire, the capital was administered by the Prefect of the Department of Seine and the Prefect of Police, and the members of the municipal assembly were appointed by the state executive. Aside from the 'fear of revolutionary Paris', Baron Haussmann, who served as Prefect of Seine from 1853 of 1870, held that state authorities should be directly involved in the government of the capital city (Nivet 2004: 10; see also Prétot 1986: 719). Some years later, during the parliamentary discussion that led to the adoption of a reform of municipal government, liberal statesman Pierre Waldeck-Rousseau argued that Paris could not benefit from municipal autonomy and the special status of a capital at once (Renaudie 2019: 1470), as these two concepts appeared to be contradictory.

Developments in the nineteenth century point to a double paradox. On the one hand, after taking the lead in many of the upheavals that led to the end of monarchy and the advent of a republican regime, Paris was placed under state control. On the other hand, in a country in which administrative uniformity was the logical corollary of centralisation (Vandelli 2003)^{IX}, the capital city was quite often subject to a specific regime that made it distinct from



other French cities and towns (Souchon-Zahn 1986: 101). This approach was also influenced by opportunistic concerns. Although the Third Republic marked a break with the authoritarian model of the Second Empire, among republican forces there was little consensus on a decisive transformation of the capital's regime. Once a revolutionary bastion, Paris turned into a stronghold of conservative groups by the end of the nineteenth century. This ultimately dissuaded the republican elites from clinging to their long-standing idea of strengthening the capital's municipal autonomy (Nivet 2004: 11). The municipal council was elected by universal suffrage, but its chair was a relatively weak figure; meanwhile, the mayors of Paris's twenty boroughs (*arrondissements*) would be appointed by the state executive until 1975. On a different note, the emergence and consolidation of universal male suffrage clearly reduced the relative weight of Paris and its inhabitants at national level and contributed to putting an end to the 'Parisian omnipotence' (Granier 1982: 122). The marginal role of Paris in the political landscape of the Third Republic was persuasively summarised, once again, by Albert Thibaudet: 'On ne gouverne que contre Paris ... Seulement on ne gouverne pas contre la province. On ne gouverne pas contre Lyon et Toulouse. On ne gouverne pas aujourd'hui contre *La Dépêche*' (Thibaudet 2007: 110).

A significant change in the legal regime of Paris would not occur until the advent of the Fifth Republic. Even in that case, the gradual, partial normalisation of the legal status of the capital city, with a diarchic executive composed of an elected mayor and the Prefect, was favoured by practical concerns (Nivet 2004: 15-16). Due to the predominance of conservative forces at the national level, by the 1960s the majority within the municipal council was no longer at odds with the state government. In spite of a few remaining suspicions, law no. 75-1334 of 31 December 1975 democratised the legal status of Paris and provided for a mayor elected by the municipal council. However, democratisation did not result into full normalisation, and the Prefect of Police kept his powers in the field of local police, that is, public order, civil protection, etc. In 2002 and 2017, the Prefect of Police was stripped of some of these competencies, which were attributed to the mayor^x. There are similarities between these developments and the evolution of the status of London until the adoption of the Greater London Authority Act in 1999: little by little, the idea that the status of capital city per se did not justify the non-recognition of local autonomy gained traction both in France and the United Kingdom (Chauvel and Renaudie 2022).

Since the 1980s, a few relevant trends have been observed. On the one hand, the possible



emergence of Paris as a counterpower continued to cause occasional concern. At a time when Gaullist leader Jacques Chirac was mayor of Paris, which office he left after being elected President of the Republic, the Socialist government that had been installed in 1981 sought to reduce the influence of a much-feared counterpower. In 1982, the *loi PLM* redefined the municipal governance of Paris, Lyon and Marseille by devolving power to their boroughs^{XI}. In providing a common legislative framework for three most populous cities in the country, the legislature focused on Paris not as the capital of France but as a very important city (in fact, the most important one). In the past four decades, the handling of the typical problems of metropolitan governance has coincided with a dilution of the specific features of a capital city (Renaudie 2019: 1474-76): by now, the focus of policymaking is not so much on the city of Paris as bounded by the Thiers wall as on its wider metropolitan area. The establishment of the Metropolis of Greater Paris (*Métropole du Grand Paris*) in the 2010s is a powerful illustration of this trend (see De Donno 2014: 13-24). The Metropolis of Greater Paris includes 131 municipalities within Île-de-France, with twelve internal subdivisions known as *Établissements publics territoriaux* and three times as many people as in Paris proper.

4. The symbolic function of the capital city

Aside from constitutional and legislative provisions, the capital city has always been affected by the exercise of state power. From a functional viewpoint, the capital city is unique in that it hosts the main institutions of the state; from a symbolic viewpoint, it is supposed to stand out for its exemplary character (see Renaudie 2019: 1471). In this respect, the case of Paris is of great interest. Since the second half of the twentieth century, French political leaders have taken particular care in enhancing the symbolic function of the capital city. This is illustrated by the management of the Panthéon and the so-called Great Works policy (*grands travaux*). For all their differences, the management of the former church in the fifth borough and the launch of daring projects like the construction of a pyramid in the courtyard of the Louvre Palace have one thing in common, that is, they are the product of presidential decision-making.

In 1964, President de Gaulle announced that the remains of Jean Moulin, the leader of the Resistance who had been executed by the German occupying forces in 1943, would be



translated to the Panthéon. This marked a break with the Third and Fourth Republics, when *panthéonisations* were proposed by the legislature; since 1964, the decision to translate the remains of a well-known figure from the (recent or remote) past has fallen within the President's tasks. Scholars have highlighted that the head of state resorts to *panthéonisations* to spell out his or her own view of the national history (Garcia 2004). Furthermore, the President of the Republic may take advantage of these ceremonies to highlight specific aspects of the ever-evolving constitutional identity of France. Such is the case, for instance, of Jean Monnet, one of the architects of European integration, and Simone Veil, who was responsible for the adoption of the ordinary law that partially decriminalised abortion. The *panthéonisation* of Simone Veil in 2018 predated by five years the entrenchment of the 'woman's guaranteed freedom to have a voluntary interruption of pregnancy' in Article 34 of the Constitution. Abortion is rarely mentioned in constitutions (see Suteu 2020), and the constitutional entrenchment of the 'guaranteed freedom to have a voluntary interruption of pregnancy' in France, aims to highlight a distinctive component of the country's constitutional identity (see Cavino 2024: 22-23).

The involvement of the head of state in the Great Works has been a defining feature of the Fifth Republic since Georges Pompidou's term of office. The relevance of these architectural projects to the definition of France's constitutional identity is less straightforward. This, however, is another example of how state authorities think of the capital city as a place that epitomises the whole country in front of the world. Even in absence of codified powers, the head of state is supposed to take the lead, while the Mayor of Paris has little room for manoeuvre.

5. Concluding assessment

In the preceding paragraphs, I have analysed some key steps in the evolution of Paris and its institutions. I have shown that there is a clear link between crucial components of the identity of France, first and foremost its republican form of government, and the place of Paris within the legal order. Quite often, this connection led the governments of the day to view with suspicion the possible implications of a fully-fledged municipal autonomy for Paris. This was the case not only under the Second Empire but also in the founding years of the Third Republic, when the French army defeated and repressed the revolutionary



Commune in Paris: ‘une armée de ruraux, en 1871, a écrasé la Commune et ... Paris est réduit, dans la vie politique de la France, à un quatre-vingt-troisième d’influence, selon le vœu des Girondins’ (Thibaudet 2007: 87). By the end of the twentieth century, these concerns had lost much of their relevance. In recent times, lawmakers have mostly focused on Greater Paris and the typical problems of metropolitan governance. In this respect, Paris is no exception to a global trend that has put in the spotlight cities and their (lack of) role in public law (see Boggero 2018: Chapter 4; Hirschl 2020; Arban 2022).

Due to the centralised organisation of France, Paris is supposed to embody the country’s history and identity. As I have argued above, under the semi-presidential regime of the Fifth Republic the head of state plays a primary role in this field. Here again, the peculiar position of Paris, which is set to highlight specific components of the national identity, is reflected in the fact that the President of the Republic, who ensures ‘the continuity of the state’ (Article 5(1) of the Constitution), has quite important decision-making powers that impact directly on the capital city. This is related not only to the need to ensure the proper functioning of the French institutions and administrative machine but also to the national and international visibility of Paris, its urban landscape, and its symbolic value. In sum, some of the specific traits of Paris’s regime have been superseded, but the peculiar role of the capital *within the constitutional order* is here to stay.

^I Associate Professor of Constitutional Law and Public Law, Scuola Superiore Sant’Anna, Pisa. Email address: giacomo.deledonne@santannapisa.it. This paper is based on a presentation given on 10 September 2024 at the inaugural ICON.S Austrian Chapter Conference in Vienna. I would like to thank Zuzana Vikarská and Nesa Zimmermann for their useful feedback.

^{II} Examples include Article 114(3) of the Constitution of the Italian Republic, Article 22(1) of the Basic Law of the Federal Republic of Germany, and Article 5 of the Spanish Constitution.

^{III} As Carcassonne and Guillaume (2022: 48) put it, monarchy is, by definition, a symbol of tradition, and the ruling dynasty embodies national unity. A republic, in turn, needs to create its own symbols.

^{IV} For the purpose of this paper, I will refer to national (constitutional) identity in a twofold meaning. On the one hand, ‘constitutional identity represents the essential core of a given constitutional order and consists of the (explicitly or implicitly) unamendable provisions’ (Drinóczi and Faraguna 2023: 67). In the case of France, the unamendability clause in Article 89(5) of the Constitution of 1958 only mentions the ‘republican form of government’. On the other hand, I will occasionally refer to a typically French notion of constitutional identity, that is, *crucial* and *distinctive* principles that make the French constitutional order unique (see Zoller and Mastor 2021: 94-95). An example of this is a speech given by Pierre Mazeaud, then President of the *Conseil constitutionnel*, in 2005: on that occasion, President Mazeaud referred to *laïcité* as a crucial and distinctive component of France’s constitutional identity – ‘Autrement dit: l’essentiel de la République’.

^V On Paris as a religious capital, see Boudon 2002.

^{VI} See law no. 2014-58 of 27 January 2014 (*loi MAPAM* or *loi MAPTAM*), law no. 2015-991 of 7 August 2015 (*loi NOTRe*), and law no. 2017-257 of 28 February 2017.

^{VII} This is exemplified by the suspicious attitude of France vis-à-vis the European Charter of Local Self-



Government. Although France signed the Charter in 1985, it only ratified it in 2007 (see Boggero 2018: 15).

^{VIII} The regulation of basic aspects of the New Caledonian regime in Title XIII of the Constitution is a very peculiar exception (see Alber 2024).

^{IX} However, see critical discussion by Plessix (2024: 320-324).

^X See, respectively, law no. 2022-276 of 27 February 2002 and law no. 2017-257 of 28 February 2017.

^{XI} See law no. 82-1170 of 31 December 1982.

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