The Theory of the Separation of Powers as Expressed in the French Constitution of 1791

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THE THEORY OF THE SEPARATION OF POWERS AS EXPRESSED
IN THE FRENCH CONSTITUTION OF 1791

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A Thesis Submitted in Partial Fulfillment of
the Requirements for the Degree of Master
of Arts in Loyola University

February

1948
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INTRODUCTION

In the broadest sense of the word every politically organized society has a Constitution which, written or unwritten, determines the political agencies which shall exist and the powers which shall be assigned to them. From 1789 to 1871, France was a field of constitutional experiments perhaps unique to the world. The variety of political regimes that she inaugurated in the course of these years is not found in the history of another people. The eight constitutions which were promulgated succeeded one another with such discerning rapidity that the people had scarcely time to become acquainted with them. In fact, it would be necessary to count the transformations many of them underwent in their brief existence.

The first constitution, that of 1791, which had been legally established was overthrown in a short time by the insurrection of August 10, 1792. In the following month of September, the Republic was proclaimed and the First Republican Constitution of 1793 was declared. Although it was never enforced, it is numbered among the constitutions because those who composed it governed France for the next two years. The Second Republican Constitution, or the Constitution of the Year III, became the official rule of France from 1795 until the
accession of Napoleon in 1799. He drew up the Constitution of the Year VIII and proclaimed it the official organ of government in France until he abdicated in 1814. The fourth political régime took root in France through the Restoration Constitution granted by Louis XVIII. This reign, however, was interrupted for a short period by the re-establishment of Napoleon I and was finally overthrown by the insurrection of 1830. Next the Constitution of 1830 was established by Louis Philippe and remained in force until the Second Republic was proclaimed by the Revolution of 1848. This government had scarcely exercised its authority when it was overthrown by the coup d'état of 1851. Through this action, Napoleon III assumed power until the revolution of 1870.

A superficial observer may conclude that France underwent more frequent and radical changes during these years than in any previous century. In a sense this is true: the outward form of government was overturned repeatedly; monarchy gave way to republic and vice versa. These new forms of government also brought important changes in the organization and exercise of legislative power in addition to the transformed executive. However, if public law is considered from a juristic point of view the picture of France is very different. Governments came and went very much as ministers come and go now, but all that is
characteristic of French public law either reaches back into
the old régime or is the product of the Revolution and the
empire.

The Constitution of 1791 derives its chief interest
from the drastic changes it proposed for the political re-
organization of the French nation. The France of the old regime
was an ancient edifice which fifty generations had been building
for more than fifteen centuries. As time went on the great con-

cflict of ideas and interests, the tragic class of forceful per-

sonalities, the international struggles produced a structure
whose parts lacked proportion and threatened to fall into ruin.
Conditions in France warranted the belief that some fundamental
changes were imperative. The nation was in a most important
crisis; and the great question whether France should inaugurate
a Constitution or continue to be governed by will was uppermost
in every mind and heart in France. This review will show that
the Constitution of 1791 was promulgated to check the tendency
on the part of the French king to centralization through the
introduction of three distinct branches of government—the exec-
utive, the legislative, and the judicial. This does not imply
that a centralized government is not good, for such a government,
when it is well managed and carefully watched from above, may
reach a degree of efficiency and quickness of action which a
government of local powers cannot hope to equal. But if a strong central government becomes disorganized, if inefficiency or idleness, or above all dishonesty, once obtain a ruling place in it, the whole governing body is diseased.
CHAPTER I
PRELIMINARY CONSTITUTIONAL PROCEEDINGS

If one were to examine the governments of Europe in the eighteenth century, and the policies which they followed or attempted to follow, he would find that everywhere control was in the hands of the few and directed to the advantage of the few. The idea that the first duty of the state was to assure the welfare of the people was not actually practiced. On the contrary, the duty of the state had become a duty of pleasing the rulers and the privileged classes. Europe was organized monarchically and aristocratically, and for the benefit of monarchs and aristocracies. There was a widespread feeling that revolutions were impending, and this feeling became a reality in France which was, politically, highly organized, and strongly centralized in 1789. In a letter to Marquis de la Luzerne, Gouverneur Morris gives the following impression of France in the year 1789:

France seems to be in a state which cannot fail eventually to produce dissensions in private circles. The seeds are already

sown; and you (who have lived in a Republic) know how quickly plants vegetate...Republicanism is absolutely a moral influenza from which neither Titles, Places, nor even the Diadem can guard their possessor. If when the States assemble their Debates should be published the Lord preserve us from a hot summer.2

He also informs Count de Maustier, the French Minister to the United States, that "your nobles, your clergy, your people are all in motions for the elections. A Spirit which has lain dormant for Generations starts up and stares about ignorant of the means of obtaining, but ardently desirous to possess its object." 3

In order to understand the nature and depth of this political and social unrest which existed in France, it is necessary to know something of the political organization and social structure which the French Revolution aimed to change. In France, the crown had always been the symbol of national unity and power. During the period in which the nation, under the deft guidance of Richelieu and Mazarin, achieved supremacy in Europe, royal authority became absolute in France. During

2 Ann Cary Morris (editor) The Diary and Letters of Gouverneur Morris. 1 Charles Scribner's Sons, New York, 1888, xi
3 Ibid., 111
the reign of Louis XIV (1643-1715) the French Monarchy achieved its final form, and did not vary from that time until the outbreak of the revolution. Fervid as were the French in their loyalty to the King, they were not willing to become subjects to lawless caprice. They strictly adhered to the principle formulated by Montesquieu between a despotism which has fear as its guiding principle, and a monarchy which has honor as its rule of conduct. The despotic control which Louis XVI exercised over France gradually decreased as the organization and management of the government increased. Therefore, on the eve of the revolution, the true center of power resided not in the hands of Louis XVI but in a Royal Council composed of more than forty members. This was probably the worst evil from which France suffered since the members of this council pretended to serve the sovereign and the people; but their rewards were determined by intrigue and favor and were entirely disproportionate to their services.

Other serious evils of the ancient régime were the unfair taxes such as the taille, and the gabelle, and the

6 Taille, a heavy property tax; gabelle, salt tax
profligate method of collecting known as "farming," the numerous and conflicting legal systems in the country, the internal custom lines, the "lettres de cachet" (arbitrary arrest), the sale of offices, the money payments to the judges, the slow and expensive legal procedure, torture, cruel penalties, and the feudal dues owed to the lord. However, it would be a mistake to conclude that the revolution was caused by the worst conditions of tyranny and oppression, for the people of France were not the most oppressed people of Europe. There must be a spirit to resist, and usually the most determined resistance comes from those who have secured at least a degree of liberty, and the French enjoyed a greater degree of liberty than almost any other people on the continent. The resistance came from the growing middle class who desired a share in the government, and by arousing a vigorous public opinion in favor of reform, they would make their aspirations a reality.

Remedies were suggested in the form of limiting the arbitrary power of the government by a constitution which would bestow on an assembly of representatives great power. This

8 Ibid., 4
assembly would make laws and sanction taxation; abolish privileges and abuses; and establish equality before the law. The three orders of French society which had been reduced to a state of political nullity by the Royalty now assumed new life and vigor for the revolutionary step meant the reformation of France. The nobles in 1789 had lost all that had made them respected; and preserved all that made them despised; their privileges appeared as a unique favor conferred on some individual. They were tired of being merely courtiers; the higher clergy desired additional influence; the commoners demanded a recognition of their existence. The nation impatiently compared the government of England, where talent could rise to anything, with that of France where one was nothing except by birth or favor. Thus all thought and action turned equally to the same end—Liberty, Equality, Fraternity.

Therefore, there was universal rejoicing in France when the convocation of the State General was announced because no one remembered a time when the government had consulted the people and they felt such a time would not come again. For 175 years the assembly had not convened and during that period no

9 Fred M. Fling, Source Problems on the French Revolution. Harper and Brothers, New York, 1913, 8
writs had been issued and no elections had been held. The old institutions were worn out and could no longer work without irritating the people. Society had become cramped by the despotic anarchy under which it had struggled. The States General gave hope of a constitution, and this word opened the door to every kind of supposition and afforded a temporary satisfaction to every aspiration.

Talleyrand states a "heavenly day" dawned for the opening of the Assembly. Morris describes the high dignitaries of Church and State in their brilliant robes of office in striking contrast to the members of the third estate clad in their gloomy black surtouts. However, they carried themselves proudly in this attire for they had achieved the desire of being once again reunited at Versailles. From that day on, the struggle began between the privileged and the unprivileged, between absolute and representative government, between the old and the new régime. All of France was in a state of contradictory and confused agitation. A state of confidence and fear, joy and rage existed throughout the nation.

Before and after the decision to summon the States

12 Morris, 70
General, a great deal was said and written about a constitution. Count Fersen, a Swedish nobleman at the court, characterized the universal talk about a constitution as a "delirium." Those who imagined that France possessed a submerged constitution that might be extracted from her annals had a difficult task. Lanjuinais desired to direct the politics of 1789 by a charter of the year 1784. Others maintained that France had a constitution which was not written, but rested upon the tradition that the monarch was hereditary and his authority absolute. Kitchin, on the other hand, states "that the solid foundations of constitutional life, in the hearts of a people sharing in power, interested in public affairs, responsible for the direction of opinion, had never been laid in France." Consequently, out of the welter of opinion, two views emerged. One group maintained that the country was either without a constitution, or if one existed, it was so vicious, that it was not worth preserving. In either case, an entirely new instrument

13 Andrews, 2
15 Faustin Hélie Les constitutions de la France. Edouard Duchemin, Paris, 1880, 3
was necessary. The other claimed that France already had a
constitution which had been violated or ignored. The existing
condition, they said, merely required the restoration of the
ancient constitution with the elimination of abuses.

When the States General were opened by the King at
Versailles on May 5, 1789, there were about 1,200 deputies, of
whom about 300 represented the clergy, 300 the nobility, and
the other 600 the third estate. It was evident that the
common people had been affected greatly by the assembly; and
the question of moment was the form to be taken by the States
General, since its solution would decide whether political
supremacy should rest with the nobles and clergy or with the
third estate. The three orders met in separate chambers, but
when the formation of a single chamber was rumored the nobles
and clergy urged vote "by order;" the third estate, desiring to
have a precedent in their favor, demanded vote "by head."

Since the assembly had not met since 1614, there was great doubt
and difficulty as to the right course to follow. No one exactly

17 Andrews, 2-4
18 Bertha Gardiner The French Revolution. Longmans, Green,
and Company, New York, 1918, 306
19 Leopold G. Legg (editor) Select Documents Illustrative
of the History of the French Revolution. The Clarendon
Press, Oxford, 1908, 9
knew what the States General was or how it was composed. Englishmen who chanced to be in France were eagerly questioned; old documents were looked into but no solution resulted. The question of the double representation for the third estate and the vote by head, instead of by order, divided France into two hostile camps. They were discussed in the press with bitterness and the important topic was always what attitude would the government take.

Louis XVI, who had summoned the States General, because of circumstances he was unable to control, again showed himself incapable of leading the nation in the crisis at hand. He regarded the convocation of the States General chiefly, if not altogether, as a great financial experiment; "a machine by which he might grapple with the hourly growing deficit, and lighten the unbearable burden of the debt." His message to the assembly was short and full of unexceptional sentiments and a fatherly regard for his people, but there was not a word about the topic nearest the representatives' hearts--constitutional reform. He had conceded to the assembly to bring happiness to the people and prosperity to the state. The final decision of the organization was left to Louis XVI, but the king

21 Kitchin, 495
had neither the statesmanship to see what the crisis demanded nor the decision to carry out what more able advisers suggested. For government to be effective, the public authorities must act in harmony; this condition was lacking in the States General.

When Louis refused to declare himself against the privileged orders, the inevitable consequence at once ensued. Negotiations proved fruitless and dispute arose as to the form of government to be adopted. The third estate refused to proceed with the business until they were joined by the other two. They did not spare their words in seeking to arouse public opinion against the upper class. Although there had been no direct collision between the crown and the representatives of the third estate, the long inefficiency of the king had destroyed belief in the royal power as an instrument of government. Yet they were deeply attached to the monarchy as a form of government and thoroughly loyal to the person of the king. Therefore, when Louis XVI confirmed the rumor that they were to meet as three separate states, the third estate took matters into their own hands and declared themselves the National Assembly of France. Having been shut out of the regular meeting place by government troops, they went to a neighboring indoor tennis court on June 20

22 Fling, 10-11
where they took the famous oath never to separate until they had given a constitution to France. A majority of the clergy and a minority of the nobles joined the third estate. Finally at the urgent request of the King, who feared an insurrection, the remainder of the nobles and clergy joined the commons on June 27, 1789. Thus the third estate triumphed in the union of the orders. This reunited body called itself the National Constitutional Assembly—an assembly representative of the whole nation whose function was to enact a constitution.

If the old constitutions of France had perished, there still remained the old elements of society—the nobles, the clergy, and the third estate who had freely expressed their opinions in the cahiers which, it is said, amounted to fifty or sixty thousands. There were letters in which the people embodied their grievances and desires; however, in none was a republic demanded, nor even a challenge to dynasty; nor did they even indirectly criticize the King's conduct. In all these documents, the French were imbued with an ardent royalism and a warm devotion to Louis XVI. In fact, none of the petitioners attributed their stated grievances to the monarchy nor even to the king.

25 François Aulard Histoire politique de la revolution francaise. I Librairie A. Colin, Paris, 1901, 80-81
In the documents of the more humble petitions from the parishes, there was a note of confidence, love, and gratitude. Those of the nobles and clergy, though less enthusiastic, appeared equally loyal. Their complaints read that "the King's agents had deceived the King" or that "the agents hampered his power of doing good." Malouet describes the cahiers as the true depository of the opinions and desires of France; however, certain other historians as Babeau, Loutchesky, and Wahl have regarded them as "noisy clamor." This might be explained by the fact that man is always discontent with the government which rules him, and if several millions were called upon to express their complaints, they certainly would complain.

The cahiers were conscientiously studied by the King and his ministers. The clergy started an investigation of their letters, and the commons summarized the opinions of their grievances on the single subject of a constitution. The cahiers revealed with clearness a middle class visualizing a reform program and the deep discontent of the working class. They showed a mode of life where abuse was borne with patience and a lack of resentment. According to these letters, deep divisions

27 Madelin, 43
between class and class existed; yet there was no class war. All the orders of society demanded greater freedom from restriction and a larger voice in the government. They demanded in general that France should not cease to be a monarchical government; that the King should remain sacred and law should not pass without his sanction. On the other hand, they desired that the States General be invested with legislative power. Concerning the distinction of orders, dissention was absolute. The cahiers of the third estate desired the termination of the division of orders; those of the nobles, with few exceptions, demanded the continuance of the division of orders. The clergy were divided. On matters of general interest, they desired a vote by head; on matters of interest to each class, they wished a vote by order. In a report to the assembly on July 27, 1789, Clermont-Tonnerre summarized the cahiers according to principles of unanimous agreement and partial argument. The people felt they could never be rid of these evils unless a constitution was inaugurated, and thus the program of 1789 which was to give France a constitution went into effect.

29 Higgins, 4
30 Appendix I and II
As soon as the fusion of the Orders had been effected, the assembly undertook its work of forming the constitution. This was a task of transforming into a limited monarchy by a paper constitution a state which had never known anything else but absolutism. The task seemed light for the spirit of the majority was confident to excess. "The constitution is perhaps the work of a day, because it is the result of the enlightenment of an age," said Barère. Every member of the assembly felt that they were all legislators and that they had come to amend the wrongs of the past, and to assure the future happiness of the French Nation. In reality the business of framing a constitution proved very arduous.

A committee was selected on July 6, 1789 to draw up a plan of procedure for framing the constitution. The following eight men were chosen—Mounier, Talleyrand, Sieyès, Clermont-Tonnerre, Lally-Tollendal, Champion de Circé, Bergasse, and Chapelier. Mounier was chosen as the spokesman for the committee not only because he was a firm believer in the superiority of the English system of government and a successful leader in the uprising in the Dauphiné, but because of his firm

31 John Abbott The French Revolution of 1789. I Harper and Brothers, New York, 1887, 141
32 The Cambridge Modern History. VIII The Macmillan Company, New York, 1904, 176
character and uncontested honesty. In his introductory remarks, Mounier explained that since the Crown had suffered in the past from faithless ministers and privileged groups, a constitution which should precisely determine the rights of the monarch and the rights of the nation would be as useful to the King as to the subjects. He explained that no political system could evade the problem of authority. The principal aim of any constitution, even of the most democratic, is to produce a government which shall govern, which shall possess real initiative and command. At the same time, however, it must discipline itself to obey, within certain limits, the ministry which created it. All government, whether it is a monarchy, absolute or limited, oligarchy or republic, draws its power from the consent of the nation, and thus can claim that it emanates from the nation.

The principles of 1789 were based on the idea that the nation is sovereign and that all its members are free and possess equal rights. After Mounier had established the right and duty of the Assembly, he indicated that two principles should inspire

33 de Hauranne, 36
34 Andrews, 12
35 William L. Middleton The French Political System
   Ernest Benn Limited, London, 1932, 46
36 Paul Viollet Histoire des institutions politiques et administrative de la France. I L. Larose et Forcel, Paris, 1890, 1
and dominate the new constitution—the principle of monarchy and the principle of representation. These two principles must organize the constitution and build up around it institutions which would make it live. From this starting point, the political constitution was drawn up dominated by the rule of the separation of powers, executive, legislative, and judicial. The assembly declared to establish:

1. The natural rights of man
2. The principles of monarchy
3. The rights of the nation, the rights of the King, the rights of the citizens under the French government.
4. The organization and function of the National Assembly
5. The organization and function of the provincial assemblies and municipalities.
6. The principles, obligations, and limits of judicial power.
7. The functions and duties of military power.

Mounier proposed to begin with a Declaration of the Rights of Man. On August 1, the Assembly began to discuss these drafts; but since France was without a government and French society was in dissolution, Mirabeau advised the adjournment of the drafts until the constitution had been finished. However, the assembly continued the discussion until August 27 when the

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38 de Hauranne, 56
last clause was passed. The deputies of 1789 believed that all the misgovernment and public ills were due to a failure to recognize the rights of man. When the charter of rights was accepted, a new doubt arose. If the citizen received rights then to obtain a greater peace, should he not also be presented with a catechism of duties? The deputies said nothing but let their creed stand for what it was—a grand entrance to the constitution.

Evolution in government had made rapid strides in France from the opening of the Assembly on May 6 until the adoption of the Declaration of the Rights of Man on August 27. Louis XVI had dismissed Necker, the financial minister, from office on July 11 without any future plan of action. On July 14, the fall of the Bastille indicated the fall of the old monarchy; therefore, Louis had no choice but to yield to all that was demanded of him. Now the nation was ready to adopt its first written constitution based on the Declaration of the Rights of Man. The events which had taken place made it more urgent and indispensable that they abolish the institutions which have injured equality and rights.

39 The Cambridge Modern History, 177-178
40 Thompson, 95
41 Henry Lockwood Constitutional History of France. Rand, McNally and Company, Chicago, 1890, 24
First and foremost in the constitution, the principle of the separation of powers was applied with the utmost critical stringency. In the preamble, the essence of the constitution, they state that the national sovereignty is exercised by representation through an assembly (the legislature), the King (the executive), and by delegation through a court of justice (the judicial). Thus the age-long monarchy was abolished. The assembly seems to have thought that the executive had been and would always be the enemy of the legislature. Though they cared little for Montesquieu, they were fascinated by his doctrine that the separation of the legislative, executive, and judicial powers one from another is the primary condition in the functioning of political liberty. They declared in the Declaration of the Rights of Man that "every society in which the separation of powers is not determined has no Constitution." Although a universal opinion for a constitutional and representative monarchy had been reached, the organization of this monarchy brought forth two distinct views.

Abbe Sieyès, the spokesman for the third order, suggested that the constitution should consult reason and set up a scientific machine whose perfection would ensure an efficient...

42 Appendix IV
43 The Cambridge Modern History, 177
and lasting government. This would serve as an example to the other nations of the world. The other school of thought, led by Mounier, Lally-Tollendal, Bergasse, Clermont-Tonnere, and Malouet thought that a constitution was not a mechanical and logical work, but work which should consult experience more than reason. They pointed to the example of England where a real constitution approved by long practice had realized for the people—liberty; therefore, would it be wise to reject this established one, and seek a better imaginary one. They knew that they could not transplant the constitution into France, but proposed to make it their model and modify it to conform to the customs and habits of France.

Although the two schools were in agreement concerning the divisions of powers, they did not interpret this separation in the same manner. For the first school, which is known as the abstract school, the separation of powers meant an absolute and vigorous limitation of the functions and duties of each of the three departments of government. Thus a barrier would be erected which would prevent the meeting of the different powers. If a conflict arose, it could not be settled by the departments of the government. This school tried to point out to Sieyès and his disciples that so rigorous a separation was

45 de Hauranne, 43-45
more practical in their heads than on paper. To all the objections, Sieyès responded that society ought to be organized on the model of the human body—"the head thinks; the arm acts and executes, and one never encroaches on the function of the other." Thus in society, the legislative power is the head; the executive power is the arm; it would be absurd to mix them. However, Sieyès and his followers forgot that in the human body, the head and arms are part of a unique being so organized that the head cannot execute its wishes without the arms, nor can the arms refuse to obey the head.

The men of the English school had not fallen into such errors; they wished to divide the power, but still each department would be able to aid, to control, and to moderate one another reciprocally. They knew that a constitutional monarchy should be one of discussion, transaction, and balance; and their good sense refused to admit the consequences of an absolute separation of powers.

It would be difficult to classify into one school or the other the majority of the citizens of the French nation. When it was a question of proclaiming the principle of national sovereignty, of instituting and guaranteeing public liberties,

46 Ibid., 46-47
47 Brissaud, 50
of substituting inequality for the injustices of the old regime, the deputies desired a constitution founded on reason. On the delicate question of the distribution and organization of power, their ideas were confused and often contradictory; however, since they desired a constitutional monarchy more than anything else they favored the plan of Mounier and his friends.

Until 1789 all the power had been concentrated in the person of the King; nevertheless, when the idea of three distinct powers was introduced into the assembly, it did not meet any objection since the political ideals of Montesquieu were well known in France. The citizens knew very little about public affairs; therefore, when they found in books a formula which seemed to solve their difficulties, they took it for absolute truth. Such was the case with the political philosophy of Montesquieu. He conceived the separation of powers as the first condition of political liberty. Montesquieu's political ideals of government are set forth in The Spirit of the Laws where he asserts the general proposition that the Constitution most in conformity with nature is that which is best suited to

49 Maurice Deelandres Histoire constitutionnelle de la France I Armond Colin, Paris, 1932, 83
the character of the nation for which it is intended. He believed that the salvation of France depended upon the possibility of undoing the work of Richelieu and Louis XIV and of returning to the old monarchy as it existed under Henry IV or Louis XII. He would temper monarchy by aristocratic institutions, since he was convinced that all individual sovereignty was bad—whether in the hands of one or many it would lead to despotism and despotism to anarchy. Therefore, he prepared to prevent individual sovereignty from becoming despotism, "in order that there may not be an abuse of power, power must check power." All France desired would be now lost if the new Constitution gave to the same man, or the same body of nobles, or to the people the exercise of all three powers. This desire to limit the power of the sovereign distinguished Montesquieu from almost all political theorists of his age. He held that monarchies perish "when obedience becomes servile, when honor is no more, when the nobles are the despised instruments of the Prince, when the dishonorable and base are honored; when the monarch, abolishing all institutions and bodies intermediate between himself and his people, seeks to centralize all government in himself." Such was the condition of France under Louis

50 The Cambridge Modern History, 18-19
51 Brissaud, 547
XVI. He wanted the Constitution of the old monarchy, if it existed, "to be rebuilt and enlarged on the plan of the British and American Constitutions." That is that a check be placed on the arbitrary power of the government.

Still stranger was the influence Rousseau exerted over the Assembly. In the **Contract Social**, the Bible of the Assembly, he set forth an absolutely and rigid and impracticable ideal. "Man is born free, and everywhere he is in chains" are the opening words of the **Contract Social**. He maintained that man makes a contract by which he agrees to live in society. He assumed that man lived first in a state of nature and that he escaped from this state through the social contract. By this he means that man surrendered his rights to a community and promised to obey the sovereign to whom it would give those rights. He desired the majority to scorn experience, to treat men as though they were all equivalent quantities, to mold and remold French society through the will of the legislator. The Constitution of 1791 was not and could not be conformable to Rousseau's maxims, but it was imbued with his spirit.

Among a mass of less memorable writings of the **cahiers** were a few of solid composition that left a mark on the policy and opinion of the assembly. The most outstanding of these is

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52 *The Cambridge Modern History*, 19-20
53 Brissaud, 538
the famous "Qu'est-ce que le Tiers Etat?" of Abbe Sieyès. He asked and answered his own question--"What is the Third estate," he asked. "It is everything," he answered, "but hitherto the States General counted little. The third estate, as Sieyès had so often said, was the "nation minus the nobles." It embraced almost all France, and it was neither a cast nor a political body. At one extreme, it touched the nobles, and at the other it plunged into the popular masses; and it was among these ranks that the ideas and the theories penetrated into legislation and renewed the face of French government. Sieyès was convinced that in his solitary meditations he had discovered the absolute truth. Sieyès separated himself from Montesquieu by his love of equality and hatred of privilege; from Rousseau by his respect for individual liberty and by his taste for a representative system. However, the arguments Sieyès presented for the defense of the third estate were logical under the present circumstances; the deputies could give no retort. The Assembly then undertook its most arduous work--the reformation of the crown.

54 What is the Third Estate
55 de Hauranne, 19
CHAPTER II

ORGANIZATION OF THE EXECUTIVE POWER

Since the time of St. Thomas Aquinas, the idea that sovereignty resides in the multitude, has been a truism of scholastic philosophy. It rests on the observation of the fact that in society the multitude will have the last word; if it is necessary to resort to force, as in battle, victory will go to the greatest warriors. In the small cities of the ancient world, the citizens assembled and used their primitive method of ostracism to remove opponents from office. But in the history of the great State of France, there was nothing to warrant the view that sovereignty resided in the people.

The ancient régime was an absolute reign pushed to the extreme. When Louis XVI ascended the throne in 1774, he inherited a power nearly absolute in theory over his entire kingdom. Royalty was a power born in itself. It was a power in the eighteenth century which was synonomous with the King of France. By its origin and its nature, it was essentially indefinite, inflexible, capable of drawing away from, or adopting itself to the most diverse situations. Royalty had its initial appearance at the close of the tenth century as a weak puny

1 Brissaud, 537
factor in society, and little by little, it had elevated itself until it could claim the title of *le grand roi* at the end of seven centuries. Although it had survived all the obstacles which fell across its path and had conquered the feudal society, it died suddenly at the end of the eighteenth century.

It was a recognized maxim that royal will was law. The king concentrated in himself all sovereign authority and all power. He united the military and judicial powers, the legislative and administrative powers, so that he exercised direct and despotic power over the nation. In certain parts of the country, the old assemblies still met at fixed times but their functions were very closely limited. The Parliaments, or high courts of justice, which had claimed the right to impose some check on legislation had become the puppets of Louis XIV, and the principal one at Paris had been dissolved by Louis XV. Therefore, the royal prerogative of Louis XVI was theoretically whole and complete since every organ of the government was auxiliary to the crown and operative only within the discretion of the King. In no part of the country was he a stranger, for his name was inscribed at the head of all local sovereign acts as the name of a superior to whom they owed certain marks of deference.

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2 Violett, 185
3 Lowell, 4
4 Mignet, 4
The King's councils had increased to five and were truly the central governing power, although they did nothing in their own name. The King nominally settled every question with their advice, but the final decision rested with Louis XVI. Every important matter was submitted to him. Thus in the government of the country, the King could at any moment take as much a burden upon his own shoulders as they were strong enough to bear. These councils had not been formed, as in England, by division of duties but had become technical boards with a distant relation to the administration.

Still the French people looked hopefully to the king for government and the necessary measures of reform. Louis XVI was well meaning and anxious to rule; he was willing to work hard at his royal duties in order to bring freedom to his people; his intentions were always good and his sense of duty strong. However, they longed for a fair distribution of public burdens, rather than for a share in the government. Each constitution formed did not limit his powers; did not impose any rules on his actions; did not give to his subjects the rights they desired. The government was more rigid than absolute; it

5 Lowell, 5-6
6 Kitchin, 469
was intangible for those who lived under it. A King of France who had reigned justly and strongly would have received the moral support of the most respectable part of his subjects; but Louis XVI was devoid of all greatness of character; there was a want of dignity about him which made it hard for him to rule: he was timid where he should have been bold, irresolute and weak where he should have been strong. This characteristic possibly accounts for the failure of his administration. Even at his death those who had lived under his despotic rule thought him honest and well-intentioned, but unequal to the situation in which he was placed. Every monarch is surrounded by many barriers which he must overcome, but Louis XVI had become so imbued with the aristocratic notions of his ancestors, so incensed by the prestige of his name, that he did not foresee the time when uncontrolled kings governing with unlimited authority was at an end.

When the monarchy became conscious that reforms were needed, and abuses had accumulated which required solving, it was incapable of introducing these reforms. When it could not

7 Ibid., 470-471
8 Doctor Paumiès de la Siboutie, Recollections à Parisian (edited by A. Brancke) G. P. Putnam's Sons, New York, 1820, 22-23
9 Benvenuti, 11
adapt itself to the new standard, a new force arose—public opinion. However, in this setting of despotism and aristocracy how could the idea of a political system which gave to the assembly the power of legislation, and placed the executive power in the agents of the King penetrate the mind of one who had exercised the three functions of government through his royal will. Nevertheless, the attitude of the government of 1789 was liberal and certainly loyal to the King. Even as late as January 24, 1791, the government issued a set of proclama­ tions to prove that the sovereign was "the good king his sub­ jects desired him to be. "His majesty," they said, "has assem­ bled the States General...to preserve in regard to them the character which lies nearest to his heart—that of counsellor and friend." The word "friend" must have touched the country deeply. This declaration might have been issued to strengthen the words of Louis XVI in the preamble to the letters of this convocation.

We have need of the meeting of our faithful subjects to aid us... in establishing according to our wishes, a constant and in­ variable rule in all the branches of the government which concern the happiness of our subjects and the prosperity of our realm. 12

10 Deslandres, 10
11 Madelin, 36
12 Andrews, 1
At this time however, were the essential elements necessary to form this new society present in the French government? Louis XVI, brought up in the rich ancestry of absolutism, would regard this representative government as a hindrance to the legitimate prerogatives which he held from his ancestors. To him, it seemed a great harm to the nobility on whom he was accustomed to lean. That Louis XVI was master and his will made the law was universally accepted by all the nation. The admiration of the English Constitution was still rather theoretic than practical, and would not detract from the loyalty undoubtedly felt for the French crown.

The King was supposed to be absolute. Yet, the representatives of the old régime made light of the declamations against the "despotism of the King." He was really the "chief slave" of a system of which he probably disapproved, but was powerless to modify. He was the official chief, but also the slave of his court, of his ministry, of tradition; and his desire for liberty was greater than that of his subjects. If he were a reformer in intention, the majority of his actions did not substantiate this belief. When Lally-Tollendal established the fact that the king should be an integral part of the

13 de Hauranne, 25-26
14 Madelin, 6
legislature, not only because it resulted from French tradition, but because it conformed to the nature of things, what chaos must have existed in the mind of Louis XVI. The royal government impatient with the abuses of the administration hurled itself from a powerless crystallized regime to a revolutionary one. It concluded that a total destruction must precede a complete reconstruction; therefore, under the new force of public opinion, divine right sovereignty disappeared from the government of France. The division and multiplication of powers substituted for the concentration of powers, and the régime of 1791 became, therefore, a violent antithesis of the old order.

After the insurrections of July in Paris and in the Provinces, and the fall of the Bastille, royal authority went to pieces. With it, according to Carlyle, went "feudalism, despotism, ... and all hard usage of man by his brother man." These insurrections were open violent rebellion of freed anarchy against hated authority. The old administrative system ended and many new municipalities were created. These same uprisings showed that no trust could be placed in the regular army, and

15 de Hauranne, 6  
16 Deslandres, 10  
18 Ibid., 204
innumerable militia, devoted to the cause of the Revolution, appeared. The rising of the peasants, the burning of manorhouses and manorial records led directly to the memorable decrees of August 4, when the feudal tenures and the privileges of orders, cities, and provinces were virtually abolished. The feudal courts of justice were swept away; and the royal Courts of Justice were extinguished without any effort. All ancient historic divisions of France gave way to a new system of departments, districts, and cantons. The confiscation of Church lands destroyed the wealth of the clergy, and the "civil constitution" caused a schism among their numbers. A wide and general destruction of the old institutions was made by the Assembly. It met little resistance as its adversaries were weak and timid. Society seemed to dissolve itself in order to receive an entirely new pattern from the Assembly. The moral effect of these measures was most salutary for those who "deplored the horrors committed in the name of liberty" and volunteers rose in large numbers to defend the royalty of the ancien régime.

19 The Cambridge Modern History, 176
21 A provision that all priests were obliged to take the oath of fidelity to the new Constitution.
22 The Cambridge Modern History, 177
23 de la Siboutie, 23
Now the Assembly, which had been summoned to consult all matters concerning the wants of the State, the reform of abuses, and the establishment of a fixed and durable order for the good of the people collectively, made haste to frame a new constitution for France. In spite of all the intrigues of the court and the agitation at the Royal palace during the summer months, the general spirit of the committee remained the same, but their number had decreased to seven since Champion de Circé had been made Master of the Seals. Since the Constitution was to reverse the old order of society and government, the French people definitely desired a declaration of their beliefs. This declaration, which they desired, was a Bill of Rights to precede their constitution as had been done in the Constitution of the United States. The fundamental theory underlying the Bill of Rights was that the principle of sovereignty resides in the nation. Article I states "Men are born and remain free having equal rights." This, the French people felt would irrevocably abolish the institutions that had injured liberty and equality of rights.

After the march of women to Versailles on October 5th

24 "The Church and the French Revolution," 859
25 Frank Anderson Constitution and Other Select Documents. H. W. Wilson Company, Minneapolis, 1905, 87
and 6th, the King and the Assembly were advised to leave Versailles and go to Paris, for they feared Louis XVI was again yielding to the influences at the court which were hostile to reform. Here at Paris the revolutionists could keep him under watch; the city was not only suspicious but also tendend toward violence and brutality. It was then that the forces were accumulated which produced the Constitution and made France a republic.

To understand the course of debates and executive decrees that resulted in the short-lived constitution of 1791, it is necessary to consider some of the parties in the Assembly. They appeared during the debates over the Constitutional question as to whether or not the king could veto the acts of the Assembly. Their names resulted from their position in the Assembly hall in relation to the president. The Right, led by Mounier, was composed of those who favored the constitutional monarchy of England. The Center party were practically neutral, and voted as they were influenced by public expression of discontent. The Left was the most active division of the Assembly. It included many young nobles, the most noted of whom were Sieyes, Talleyrand, and La Fayette. This division planned to

26 Shalier Mathews The French Revolution. Longmans, Green and Company, New York, 1925, 57
sever themselves from the past, but at the same time to maintain the monarchy.

There was one man in the Assembly, although he did not claim membership in any of the parties, who saw the state of France as it actually existed. This was Mirabeau who will be remembered for what he attempted rather than what he accomplished in the first years of the Revolution. Although he was suspected by all parties, he was recognized for his opposition to absolutism, and his ability as a writer on political subjects. He was bitterly opposed to the old régime, but saw that France was incapable of a republican government, and, consequently, urged a change to constitutional monarchy. He was unable to win over LaFayette and his followers to his plan in spite of his influence in the Assembly. As the revolution progressed and the Left seemed to gain victory, the stronger did Mirabeau's desire become to restore Louis XVI to the favor of France. He urged Louis XVI to win back the confidence of the nation by separating himself from the upper order. Mirabeau wished that the King should have a veto power over the acts of the Assembly, but the people dreaded the continuance of absolutism and determined to

27 Mathews, 154
28 The Cambridge Modern History, 188
29 Gardiner, 82
weaken the power of the executive. Mirabeau did not trust the wisdom of collective bodies, or the political intelligence of the middle classes; therefore, he supported the King as the guide and leader of France. The Assembly would not sanction any real power in the executive. Many were opposed to Mirabeau; and in order to be completely independent of royal influence during the formation of the constitution, the Assembly voted that no deputy should be allowed to receive office from the King. This aimed directly at Mirabeau, as the rumor had spread that Mirabeau was seeking a place in the parliamentary ministry. Although he urged Louis to repeal this measure, his efforts were in vain and the principle was embodied in the constitution. Monarchy had been destroyed by the deputies. They said the maxim of separation of powers kept the chiefs of the executive from the legislature.

The remodeling of the administrative system began with the sovereign. From the examination of the cahiers, there were definite questions concerning the authority of the king which needed a solution. Since the Assembly had declared itself inseparable from the person of the King by moving from Versailles

30 James H. Robinson (editor) Translations and Reprints from the Original Sources of European History. 1 University of Pennsylvania Publication, P. S. King and Son, Philadelphia, 1897, 9
31 Appendix II
to Paris, it was almost as much a prisoner as the King. The
constitution preserved the hereditary monarchy but set limits
to the power of the King in accordance with the formula of the
separation of powers of Montesquieu. It designates the King as
premier fonctionnaire public. He is no longer the executive
power itself, but is now the chief person to execute orders
given to him by the constitution. In the parliament, in the
clubs, in the newspapers, and even in the dictionary the word
roi was abandoned, and in its place had been substituted pouvoir
exécutif. Now he reigned in virtue of heredity, but not in the
name of the law. All that he stood for was lost to public
worship when he ceased to command reverence and obedience. The
Assembly was inexperienced in the art of politics; and in ex­
cluding royalty from constitutional power, it placed Louis XVI
in a subordinate situation, and took from court its glory in
the ancient regime. Therefore, agreement between the King and
the Assembly, which was always desired but not always managed
wisely, became very difficult.

The powers and rights of the king as enumerated in the
constitution made him a mere honorary clerk isolated in his

32 Legg, 321-322
33 Helie, 20-21
palace. If the nation did not have the right to remove him, there were cases in which he was considered as having abdicated. For example, in the spring of 1790, Louis XVI had ordered some of the French fleet to the territory of Nootka Sound in North America to help settle the dispute between England and France over the region. Spain claimed the help of France under the Family Compact, and this claim was acknowledged by Louis XVI and his ministers. He hoped the Assembly would support him because of the ancient enmity against England; however, his hopes were in vain, for the Assembly, disregarding the immediate need, decided that if treaties were acts of sovereign power, then no treaty could be valid without the expressed consent of the people. Since none of the treaties of France had received expressed consent of the people, none of them could be binding. Mirabeau urged that the King should still have the power of declaring war and peace, but the Assembly favored the proposal which placed this power in the hands of the Legislature. The Assembly gave a new proof of its resolution to keep foreign affairs in its own charge when it cancelled the permission given

34 Appendix IV
by the Ministers to Austrian troops to pass through France to Belgium. Spain became distrustful of France and made terms with Great Britain yielding all the points they had disputed. The weakness of the French crown was now as powerful in foreign affairs as in domestic affairs. The Assembly acknowledged the nation liable for the King's debts as they feared the emergencies of foreign affairs would enable it to regain some of its power and dignity.

The constitution gave to the King the exercise of the executive power, and a very limited share of the legislative power. He appointed ambassadors and negotiated with foreign nations, but these negotiations were subject to the ratification of the legislative body. He was supreme head of the army, but he could appoint only the superior military commanders and could give no orders to the National Guard. He was likewise the highest authority in the administrative system, but the appointment of administrative and judicial officers did not belong to him. In reality, the King was merely the person to whom royal authority had been delegated hereditarily; he could be truly styled King of the French people by the grace of God and the constitutional law of the state. The crown was indivisible and trans-

36 The Cambridge Modern History, 190
37 Appendix IV
38 Brissaud, 550-551
mitted through the male line according to the law of primogeniture. His ministers, selected outside the assembly, were only admitted to it for the purpose of giving information and answering questions. All secondary and local authorities—judges, administrators of departments and districts, mayors and municipal officers—all, from the greatest to the least were elected. The King stood for the executive power, but he had no executive agents. Every order of the King had to be counter-signed by a minister, and the ministers were responsible, while the King was irresponsible. Gouverneur Morris visited the Assembly on November 20, 1790 while the constitution was being made and expresses his opinion of it thus: "The Almighty Himself could not make it work unless He created a new species of man. Lafayette is assailed by doubts. Mirabeau declared that the disorganization of the kingdom could not have been better planned."

In spite of the King's submissive behavior, as he had shown no opposition to any measures adopted by the Assembly, the executive was still looked upon as an enemy. He still appeared too formidable; therefore, in order to prevent him from taking

39 In France, the exclusive right of inheritance belonging to the first-born son.
40 Pierre Gaxotte The French Revolution.
Charles Scribner's Sons, New York, 1932, 171
41 Morris, 128
action, he was rendered suspect. Everything he did was denounced as useless or interpreted as a plot. The head of all public documents established the hierarchy of authority in France—"The Nation--The Law--The King." If he used the powers left to him, the nation declared he was abusing them. He was in a position of marked inferiority to the Assembly, for he could not dissolve it; the appeal to the people was denied to him.

He was the head of the administration, but how could he rule ministers who were elected by the nation, and whom he could neither dismiss or suspend from their functions. "The Assembly," writes Mirabeau, "has not created any executive power . . . I maintain that no power can exist without agents and without organs." The Assembly turned the King into its chief servant, but did not grant this servant the possibility of serving well.

While these general principles regarding the change in executive power were being debated, the question of the King's acceptance of the constitution brought a new problem before the Assembly. Some remarked that the King might refuse the constitution and thus act against the general desire of France.

42 Madelin, 120-121
43 Ibid., 123
M. Redon tried to prove that the Assembly had no right to even think that the King's approval was necessary. The fact that the cahiers demanded it was sufficient to guarantee its acceptance. Considering his critical position in the eyes of the nation, Louis XVI would not have the right to set himself against the establishment of the revolution, that is, against the liberty of his people; he must sign and ratify the constitution for himself and his successors.

On February 4, 1790, Louis XVI unexpectedly came to the Assembly and after a short speech, in his own name and that of the queen and his young son, solemnly took the oath to abide by the Constitution which was being produced. Formerly, Louis XVI had refused to promulgate isolated fragments of the constitution, but had acceded to the resolutions of August 4 on condition that no attempt to diminish his executive power was made. Now in February, Louis XVI was painfully resigned to the weakening of royal power.

Being informed of the adhesion of the great majority to the constitution, I now announce that I have relinquished any claim to assist in that work; and that when I, responsible to the nation alone, thus abandon that claim, no one

44 Andrews, 28-35
45 Thompson, 105
else has the right to feel aggrieved ... When I shall have loyally put in operation all the means placed at my disposal, no reproach can be laid to my charge, and the nation whose interest alone ought to serve as a guide, will express itself by the means reserved to it by the Constitution.

After the Assembly had deprived Louis XVI of all active power and had established his position as executor of the laws of the Assembly, the leaders saw that the Revolution could not end until the executive had regained some power. This hope, however, was lost by the constitution. For some time the members of the committee had debated the question of the King's veto. On this question great interest centered. Shall the King have an absolute veto? or a limited, a suspensive veto? or no veto whatever? were the questions of the day in France. In the journals, the clubs, the districts and on the streets, the veto was called the re-establishment of despotism.

In the provinces and in Paris there was proof of the ignorance of the people concerning the veto. The veto was considered in the provinces as the "most cruel tax" that could be introduced into France. In Paris also, they mistook it for a

46 M. Guizot and Madame Guizot de Witt France. (Vol. VI of The Nations of the World) Peter Fenelon Collier and Son, New York, MCM, 64-65
47 de Hauranne, 75
Baroness de Stael in the Consideration on the French Revolution states "they spoke of the vote in the streets of Paris, as of a monster that would devour little children."

The veto was the popular description of what finally appeared in the constitution under the heading De la Sanction royale. Sanction had been in use for centuries, but has had various meanings. M. Guillatin, substituting the word "consent" for that of "sanction" proposed a draft of four articles to determine the degree of power to be placed in the hands of the King.

1. May the King refuse his consent to the constitution?
2. May the King refuse his consent to acts of the legislative body?
3. In case the King should refuse his consent, is this refusal to be suspensive or limited?
4. In case the King's refusal is suspensive how long may this refusal continue—during one or two legislatures?

On M. Guillatin's first question there was no need of deliberating. On the second question, the result of the votes were 730 for the affirmative, 143 for the negative, 76 not voting. The third question was then put to a vote, and it was on this one that the greatest interest centered. All admitted

48 Andrews, 32
49 Appendix IV
royal sanction in order to give force to the laws; it was a matter of deciding whether the refusal of the King should be suspensive or unlimited. In the last analysis Lally-Tollendal stated that to question whether the King's veto shall be suspensive or absolute is to question "whether there shall be a King, and the liberty of the nation requires a King, requires the King's prerogative, requires the King's sanction." Mira-beau supported the absolute veto with all his influence; Mounier gave his approval to this also; Lafayette, in imitation of the United States proposed the suspensive veto; Sieyès would admit no veto. It had been assumed by him and all other members of the Assembly that the King and the King's ministers would be the executive power in the new constitution, but it had never been anticipated that they would be given power limited or unlimited in the proceedings of the legislature. The principle of separation of powers they were trying to introduce would be violated seriously by this action.

The question of the royal sanction was then considered from all angles by the Assembly. The sanction of the King of England is absolute. That of the President of the United States is limited. Now the aristocracy made their last desperate stand

50 Stephens, A History of the French Revolution, 201
51 Andrews, 34
and fought fiercely. Many of the popular party, alarmed in view of the rapid progress of events advocated an absolute veto. Its inconsistency, however, with all enlightened principles of liberty was too apparent to be concealed. If the principle of the separation of powers were rigidly applied, the King must be refused the smallest measure of legislative power. The fate of liberty seemed to depend upon this question, as the absolute veto would enable the court, through the King, to annul every popular measure.

Now the impulsive temper of the Assembly dominated and men were anxious to express their feelings. Those, who like Mounier, valued English precedents proposed that the King should have the power of vetoing any measure passed by the new legislature. They seem to have forgotten that the King of England had in reality lost the power of rejecting bills. The only real check upon legislation in England is the responsibility of the Cabinet which controls the majority in the House of Commons. Mirabeau supported the absolute veto and expressed his views in the debate of June 15.

When it becomes a question of the royal prerogative, that is...the most precious possession of the people. I believe the veto of the king is so necessary, that if

\[52\] Abbot, 149
\[53\] Stephens, A History of the French Revolution, 200
he did not possess it, I would rather live in Constantinople than in France. 54

Mirabeau had gone back to Montesquieu's words, "If the executive power has no means of arresting the enterprise of the legislative body, the latter will become despotic; able to increase its own powers continually, it will finish by annihilating all other powers." He continues his debate thus:

Yes, I declare it, I know of nothing more to be dreaded than the sovereign aristocracy of 600 persons, who being able tomorrow to declare themselves irremovable and the day after hereditary will finish like aristocrats all over the world by usurping everything. 55

Mirabeau felt, that if the veto was rejected supreme executive power would pass from the King to the Assembly, and France would then have 1200 tyrants instead of one. The veto, he declared, gave the people, through the King, the means of checking their own representatives. Mirabeau sensed he was maintaining an unpopular cause, and refrained from voting in the final decision although the veto was advocated by him in all his influence. 56

Similarly, the opposing forces were well matched in

54 Guizot, 32  
55 Stephens, The Statesmen and the Orators of the French Revolution, 186  
56 Stephens, A History of the French Revolution, 202  
57 Cambridge Modern History, 182
this heated debate. Sieyès, the famous spokesman for the third estate, spoke against allowing the King any veto whatsoever. "I define the law as the will of the governed: therefore the governing ought not to have any part in its formation." The functions of the legislature should never be assumed by the king under any title whatsoever. Another of his famous maxims, "the Assembly is the head, the king is the arm" proves he would not admit any species of veto. He held the view that an assembly was in a better position than a king to know the mind of the nation; that the business of the executive was to carry out the will of the legislature not to obstruct it; and that a royal veto on the proceedings of a national assembly is nothing less than a lettre de cachet issued against the will of the people. Lafayette, who had been influenced by the American precedent, wrote to Necker and Mounier in favor of the suspensive veto, warning them of the disaster which might occur if they tried to obtain more for the king. The people of Paris as Barnave, Duport, Lameth, and Alexandre, were more vehemently opposed to the royal veto than those who sat in the Assembly. They undertook the situation quite clearly; for if in normal

58 de Hauranne, 80
59 Peter Kropotkin The Great French Revolution.
G. P. Putnam's Sons, New York, 1909, 147
times, the power of the King to check a decision of the parliament loses much of its importance, it is quite another thing in a revolutionary period. In ordinary times, a parliament would seldom pass anything that the King would have to veto in the interest of the privileged classes; while during a revolutionary period, the decisions of a parliament may often tend towards the destruction of ancient privileges, and consequently encounter opposition from the King. Mounier was unshaken; but Necker and some of his colleagues told their friends in the House, that unless the absolute veto could be carried by a decisive majority, it would be better to vote for the suspensive veto. Among his opponents, Mounier had some private friends who opened negotiations with him. They proposed to accept his absolute veto and two Houses, if in return the Senate should have only a suspensive veto on the acts of the representatives, and that the convention be held periodically to revise the constitution. These offers were signs of weakness.

During the debates on this subject it appeared, that the majority of the members were so apprehensive of a return of the old tyranny, that they were so solicitous to secure the

60 Ibid., 148
61 Acton, 111
legislative power from the attempts of the executive, that they seem to have forgotten that it was a monarchical constitution which they had professed to establish, and weakened the executive power to such a degree as almost to render it useless. The question might have been debated forever; but on September 11, after transactions none too clear, it became known that the King would consent to promulgate the resolutions of August 4, if he were granted a valid veto for two sessions. Under this gentleman's agreement, the suspensive veto became part of the constitution the same day. That the king should have a veto was resolved by 730 voices to 143; that the veto should be merely suspensive was passed by 673 voices to 325.

It had, in fact, been carried less by the arguments of the speakers than by urgency of the political situation, since another attack on the capital was feared. "The veto," they declared, "belongs to no individual but to twenty-five million people." The leaders of agitation were determined to resist the threats of Paris. In so strained a situation, the deputies were willing to trust the King, to close the debate, and to compromise on a suspensive veto. Theoretical passions

63 The Cambridge Modern History, 183
and revolutionary instincts prevailed over philosophical or political reasons; the national pride resented any imitation of the English constitution; the principle of the absolute veto was rejected.

The suspensive veto meant that if the King refused to sign a measure, the act could not be brought up again in that assembly; but if it were passed without alteration in the two following assemblies, it became a law without his consent. The veto might be applied not only to long-term constitutional laws but also to routine decrees by which the assembly was remodeling the old régime, and dealing with the emergencies of the hour. Thus by this substantial check upon his power, the King had impressed upon himself and all the world that his position was now a subordinate and a regulated one.

When the Assembly had reconstructed the power of the executive, it addressed the French people to give them confidence that a constitution was being formed to assure their liberty forever. It emphasized particularly that monarchy, so dear to all the French, had been retained, but at the same time the rights which the nation had lost to decree its taxes and laws had been restored.

64 Guizot, 32
We have destroyed the power of the executive—No, say rather the power of the ministers, which in reality formerly destroyed or often degraded the executive power. We have enlightened the executive power by showing it its true rights; we have above all enabled it by tracing it to the true source of its power, the power of the people. The executive power is now without force—against the constitution and the law, that is true, but in support of them, it will be more powerful than ever before.65

Although Louis XVI recognized the constitutional power officially, he saw in it only a usurpation of his royal authority of which he did not wish any reduction. Even to the last moment he never abandoned the hope of one day reducing to obedience this new power which he reproached himself for having allowed it to grow by the side of his own. The Assembly, in reality, had given the king much greater power than the President of the United States possesses. A two-thirds vote of both houses can immediately carry any measure against the veto of the President.

Sometimes the French Revolution has been attributed to the influence of the American Revolution, and there is no doubt that the establishment of the independence of the colonies from Great Britain hastened the Revolution; but the movements were made by entirely different peoples. The enumeration of the rights of man came from America, and the American Declaration of

65 Robinson, 21-23
Independence contains some of the abstract theories of French philosophers which burst forth in 1789. The Declaration of Independence was entirely the work of Jefferson, and therefore, was influenced by French writers. Also the history of republican ideas had been read by all enlightened Frenchmen in the Constitution of the United States. This constitution had organized the rule of separation of powers and had given to public law a precision and a fixity unknown to the ancien régime. In the United States the constitutional doctrine that no political organ possesses inherent powers is fundamental. The executive as well as the legislative and judicial branches derive their powers from the same source—the people. The branches of government are separate, and in a large measure independent of one another in the operations. French writers had sought refuge in England and found there freedom of thought and speech. They also found a free government in which the king and the court were not absolute, but in which a national legislature controlled the state and determined who should be the ministers, and under which public burdens were borne by all classes alike. When they returned to France they made known their discovery. However,

66 "France before the Revolution of 1789." (author unknown) Living Age. Vol. 52 No. 660, 148
the French did not borrow English institutions at the outset, but it gave them a living example of the results which they might hope to reach if they could first make the government over. France, now had adopted this instrument of government, but her greatest problem was to distribute the powers without weakening the general government. She had subordinated the executive, and now turned her attention to the organization of the legislature.

CHAPTER III

ORGANIZATION OF THE LEGISLATIVE BODY

When the Assembly passed the Declaration of the Rights of Man, they acted in harmony for the last time. The establishment of principles did not involve agreement in policy; but when the time came to apply these principles to the constitution, division arose among the members of the assembly. Nevertheless, all parties adhered strictly to the principle established by the Rights of Man, that the nation transmits power. The Constitution preserved the hereditary monarch, but in the organization of the legislative department the Assembly desired to limit the powers of the king in accordance with Montesquieu's formula for the separation of powers which had been introduced into the United States. The debates on the Declaration of the Rights of Man had shown the strong line of demarcation between the supporters of different philosophical writers. However, when the organization of the legislature was proposed political differences began to appear. The over-emphasis upon legislation which the Constitution of 1791 shows was a reflection of the dominant spirit of the assembly.

1 Acton, 109
From time to time, the question is often asked by a stranger passing through a country, "who makes the law?" and then in turn "what are the principal objects of these laws?" In ancient law, if the formula has been transmitted correctly, the documents are silent on the participation of the people in the formation of the ordinances. In the documents emanating from the King during the Middle Ages, there is no mention of representation in making the laws. However, these royal ordinances sometimes did not merit the name of law.

A letter addressed to the Sequin, the Archbishop of Sens, illustrates the fact that if the King himself in the early centuries did not pass legislation then the nobility assumed this duty. It further states that this is a tradition greater than Hugh Capet. The last Carolingians promulgated only a small number of laws and this weakness in legislative power continued under the Capetians. It is said that Hugh Capet followed the royal custom of promulgating laws; but if he did, they have never been found. During the Middle Ages, also, the King rarely acted alone. He promulgated the general ordinances and legislated in common with the lords; although the law was issued in the name of the King, it had been accepted beforehand by the suzerains.

2 Viollet, 189
3 Ibid., 191
During the thirteenth century, Beaumanoir, one of the theorists of the day, fails to mention the dependence of the King on the vassals, but on the other hand he does not attribute the principle of full legislative power to the King. According to Beaumanoir, general councils such as Le Grand Conseil (The Great Council) were established. At the close of the thirteenth century, this was the only one that remained of all that once had been of such great importance in the early twelfth and thirteenth century. The courts did not disappear entirely in this century, but they became scarcer and scarcer and soon disappeared.

The power exercised by St. Louis during this century, without a doubt, contributed to the development of a centralized authority. The feudal barons became conscious of the end to which the development of the monarchy was leading and they saw the necessity to resist since their demands would have completely overthrown the monarchy and restored old feudal independence. However, Louis IX had been arbitrator between the Count of Provence, and the Count of Toulouse, and later between the King of England and his barons. In addition, his high moral standard and his military achievements made him greatly esteemed among other Christian princes, and thus he conquered his royal domain with an authority unknown to predecessors. Therefore, at the end of the thirteenth century, the King had assumed sufficient
power to make the greater part of his kingdom accept his orders and decisions.

Toward the middle of the fourteenth century, the King had established a group of offices, such as the Parlement, and the Chamber of Accounts in order to assure the regularity of business during his administration. As it often happens, the actions of the King were assumed by these assemblies, and the instruments which he had created for good became impediments to his reign. Thus the King was hindered by his own officers. On the other hand, he gave directly to the Chancellor, a control over certain acts which should have been reserved for his own good. Thus, there rose up around the throne diverse groups, formed of elements whose resistance marred the flexibility of the king.

During the Middle Ages, law was an ideal which not only represented the wisdom of past centuries, but served as the connecting link between the present and the past. The sovereign power of the Middle Ages was not to change the law, but to assure its respect; if, therefore, the law of ancient times had been modified, it was the duty of the King to re-establish it without

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4 Lowell, 89
5 Count de Boulainvillein The Ancient Parliaments of France.
II J. Brindley, London, 1734, 263
altering the established customs of the country. Today law is regarded as anything which has been voted and promulgated according to a constitution. The fathers of ancient law did not give this free interpretation to the word. In France, *loi* was used only on rare occasions and signified the command of authority; it guarded a very special treasure for the nation. For less important measures, the word *edit*, meaning a decree, was used. In the late Middle Ages, law was made: one did not make law. The theory regarding the promulgation of law was that wisdom and experience were the two fundamental principles necessary to assure the people of a just law. Therefore, the King was to sense the needs of the people and issue laws which would give security to the people without presenting this law to the scrutiny of an assembly.

The first movement for representation in the formation of law began in the provinces. The King authorized and ratified their decrees and in this way contributed to the exterior life of the people; the deputies influenced the decrees, but it was the people who made the ordinances. Thus during the Middle Ages, the theory concerning the participation of the people in the formation of law was a minor problem to the king; but after 1789 when it became a reality it resulted in a great re-organiza-

6 Viollet, 200
When the assembly had secured the position of the executive, it turned its attention to the organization of the legislative body of the nation. In a substantial discourse in the principles of representative monarchy, Lally-Tollendal established the fact that the King ought to be an integral part of the legislature, not only because it resulted from French tradition but because it conformed to the nature of affairs. It had been agreed that the legislative power had been controlled not by the King himself, but by the councils. All the initiative of legislation rested with them, and by them, all laws were shaped and drafted. It was not agreed whether their edicts possessed full force of law without the assent of the high courts or parliament.

As many plans had been proposed for the Declaration of the Rights of Man, so too there were many for the formation of the new legislative power. Lally-Tollendal suggested the following:

1. That the legislative body ought to be composed of three parties— a King, a senate, and a House of Representatives.
2. That the King ought to have the right of convoking the legislative body at certain times fixed by the constitution, and of prolonging it or dissolving it, and of calling another when one adjourns.

3. That the sanction ought to belong to the King, and the initiative exclusively to one chamber or another. All bills for revenue ought to originate in the House of Representatives.

4. That the House of Representatives ought to be the sole accuser, and the Senate the solitary judge of public officials. The accusation, the trial, and the judgment ought to be public.

Mounier then came forward with his plan for the organization of the legislative body. He suggested:

1. That National assemblies would be permanent and would convene every year on December, and sit for four months.

2. That royal sanction would be necessary for all future legislative acts, but not for the pending constitution.

3. That taxes would be levied for a limited time only.

4. That the legislature would be separated into a Senate and a House of Representatives.

5. That France would be divided into districts of 150,000,000 inhabitants from which one representative chosen by the elected deputies would be named as delegate to the assembly for three years.

6. That neither the ministers of the King nor his representatives in the province could be chosen delegates.

7. That royal orders be prohibited.

8. That the King would have the power of dissolution and the power to call a royal session.

9. That the initiative would belong exclusively to the legislative body.

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8 Arthur Young Travels in France. George Bell and Sons, New York, 1889, 150
10. That revenue laws be introduced in the Senate, and that it be permitted to change the laws after they had been voted upon by the house.9

During the session of the Assembly from August 27, 1789 until October, 1789, the permanence of the Assembly, the division into two bodies, and the royal veto were discussed. The Moderates or Liberals who were predominant in the work of the constitution hoped by the division of powers and the multiplication of checks to make their country as free as England or America. Mounier possessed the necessary tact; Clermont Tonnerre and Lally-Tollendal were gifted orators; Malouet was their cautious adviser. They desired to control the representatives by a second chamber, by the royal veto, and by the right of dissolution.

In his report to the assembly, the Bishop of Bordeaux urged the members to center their attention on two important questions relating to the composition and organization of the legislative body. The first question was whether the body should be periodic or permanent. The majority of the cahiers suggested a recurrent assembly, but the committee had voted unanimously for a permanent body. Agreement on this question had been reached, since they feared that if the legislative

9 de Hauranne, 71-73
10 Acton, 109
power acted by fits and starts every three or five years, the stability of the state would be threatened. At each convocation, the general excitement would cause a disturbance in public tranquillity, while its intermittent character would encourage the introduction of abuses and France would once again fall into the power of ministers. The assembly would not only meet every year but would continue to exist from one meeting to another.

The opinion of the committee was not equally decided on the composition of the legislative body. Should this National Congress meet in one chamber or in two was the all absorbing question. The advocates of a single chamber felt they could rely with confidence upon the example of the one in which they were assembled. The good works resulting from it were already evident. They further urged that it is common will which makes the law, and it is at its best in a single chamber; any division of the legislative body would destroy its unity and thus render impossible the best institutions and the most salutary reforms. The division of the assembly, they urged, would produce a condition of discord and strife, and political inertia would emanate from this. As a result, France would once more be exposed to the dangers of a new aristocracy which it wished to

11 Andrews, 38
12 Alexis C. Tocqueville L'ancien régime et la révolution. Michel Lévy Frères, Paris, 1856, 278
The representatives stated logically that the branches of government were being organized according to the desires of the nation as expressed in the cahiers. The people understood that a second chamber in a revolution was impossible since it could only act when the revolution was exhausted and a period of reaction had set in. Thus they asked unity in the legislative power.

Others, on the contrary, held that the division of the legislative body into two chambers was necessary to prevent all deception and haste and to assure maturity of deliberations. England and America were again used to show the utility of two chambers. It is true, they said, that in a time of reorganization a single body is preferred, but for the constitution which had just been established two chambers were necessary to preserve and stabilize this document. The nation was trying to abolish the intervention of the King in legislation, but compared to the restless force of a single chamber expressing the desire of the nation, the King's interference would be worthless and ineffective. One chamber, they pointed out, might influence the King to alter the legislative system and, consequently,

13 Andrews, 16-17
14 Kropotkin, 147
15 Andrews, 17
bring new uprisings to the nation. One body might easily be encouraged to reach decisions either by ministers directed against them, or by intrigue; and the faulty legislation resulting from these hasty decisions would shortly lead back to the old despotism or new anarchy. However, they added that in the division of the legislative body the distinction of orders should be abolished, for the dangers of aristocracy were to be more feared since now they would have the seal of legality.

Mounier, as reporter of the committee, recommended that there should be two chambers in the new French legislature as there were in England; but before any explanation was made of the proposed chambers a very warm debate arose. Although there were many admirers of English institutions in France, they were greatly outnumbered in the Assembly by those Frenchmen who thought it derogatory to copy England and who wished to present something very original and very perfect by themselves.

Mounier held that sovereignty resides in the nation, but operates through delegates appointed or elected by the people. If these representatives have no other check than the executive power, they may pass among themselves unwise legislation. Two

16 Andrews, 18
17 Hippolyte A. Taine The French Revolution. I Henry Holt and Company, New York, 1897, 166
chambers deliberately separated assures the contrary.

The great majority of the earlier leaders of the Assembly were, like Mounier, in favor of the two chambers. Lally-Tollendal insisted on the division of the legislative and the unity of the executive. In order to obtain equilibrium in the government, each chamber should have a particular interest independent of the general interest common to both chambers, and at the same time be part of the whole system. Unity, swiftness, and flexibility are the essence of executive power; therefore, it should be concentrated in one hand. Deliberation, slowness, and stability ought to characterize the legislative power; therefore, it should be divided.

Before the division of the legislature was decided upon, new debates arose on the organization of this National Congress. If it should meet in two chambers, would the upper house be an aristocratic, hereditary body like the House of Lords in the British Parliament, or an elective republican Senate, as in the American Congress. The people would not consent to an hereditary House of Lords, which would be an impregnable

18 de Hauranne, 72
19 Ibid., 69-70
20 Stephens, The Statesmen and Orators of the French Revolution, 120
fortress for the illegal seizure of royal power. They were inclined to agree upon an upper house to be composed exclusively of the clergy and the nobles, but to be elected by the people. They were opposed to an election of the upper house even by the nobles and the clergy, for the high lords and great dignitaries of the Church looked down upon the lower nobility and the working people. The masses of people became more and more irritated and clamored for a single chamber.

Lally-Tollendal also proposed an organization of a second chamber. He would have an upper house open to nobles, clergy, and deputies since a separation of orders no longer existed, but his problem arose over the selection of these representatives. If the people elected them, many members of the Assembly would be insulted. If the King selected them, great power would be given to him. Therefore, as a compromise, he would give the King the right of selecting the Senate from a list of candidates drawn up by the provincial assemblies. In this manner, the senators would neither be hereditary nor elected temporarily; they would be elected for life. Thus the upper house would have neither the mobility of an elective chamber, nor the immobility of the aristocracy, and the problem would be solved.

21 Abbott, 149
22 Moore, 414
Those who opposed the veto were as violent against the two houses. They feared that the influence of the court would at some time or another form the upper house and make it hereditary. They refused to see all the advantages of the British Constitution, and declaimed against its abuses. Perhaps the proposal of two chambers might have been carried had it not met with strong opposition from a quarter where it was least expected—from the nobles themselves who were against an upper chamber because of their situations and their opinion. From the "superabundant noblesse" of France, only a small portion could be chosen to form an upper chamber. Many of those, who saw little probability of becoming members of this house, could not bear to see those who were their equals, or perhaps inferior, obtain a place in the upper chamber; therefore, they were against the measure.

Others of the nobility imagined that those who had first joined the Third Estate would be promoted, and they became irate when they considered that men, whom they considered traitors, would be placed at the head of a chamber as a reward for their deed. Some of the higher orders were opposed to the Revolution in any form, and believed that this regulation would give

23 Ibid., 416
24 Young, 48
the movement stability.

The project of the two houses was disliked by the public in general, but especially by Sieyès and many of the deputies of the Third Estate who considered it as a plan calculated for favoring a portion of the nobility above the other members of the National Assembly. They recognized that some factor was necessary to delay and reconsider legislation, but most of the Frenchmen making the constitution were inexperienced in political science, and impetuous and enthusiastic for a constitution for France.

A Senate was for different reasons unacceptable to both sides of the Assembly. The Left disliked it since it was direct divergence from the political ideals of Rousseau who, in his Contract Social, condemns any check or delay of popular resolutions. They were haunted with a fear of royal and aristocratic reaction. They thought that even a Senate of the American type would hinder the fulfillment of their principles. The Right were also hostile, or at least indifferent.

The vast gatherings at the Royal Palace soon became

26 Young, 157
27 The Cambridge Modern History, 180-181
unanimous in asking for one chamber when it was brought to their attention that several members of the Assembly were suggesting a third chamber. They claimed that the question was not clearly stated and believed that the unity of the Assembly did not exclude the division of the chamber. However, with this suggestion the Assembly recalled all to the question of two chambers. The vote which was taken by roll call on September 10, 1789, resulted in a tally of "499 votes for a single chamber; 89, for two chambers; and 122, lost or not voting." Thus for a second time, the nobles prevented a check upon hasty legislation.

On the rejection of his plan of organization, Mounier at once resigned his seat on the constitutional committee, as did also Bergasse, Lally-Tollendal and Clermont-Tonnerre. Thus the first constitutional committee came to an end. A new committee was chosen including Sieyès, Talleyrand, Le Chapeleur, Thouret, Target, Desmeuniers, and Tronchet. The new committee contained no representatives from the nobility, and Talleyrand could not be considered as a representative of the clergy. It represented the Left party in the Assembly—the body who desired the form of the monarchy while destroying the substance.

29 The Cambridge Modern History, 183
The legislative power now consisted of a single chamber, and the number of representatives was fixed at 745. They were distributed among the Departments on the threefold basis of extent of land, of population, and of the amount paid in direct taxes. According to territory, there were 247; according to population, 249; and according to taxes, 247. The legislative department, since equality had just been proclaimed among all the citizens elected the representatives by universal suffrage. However, it considered it necessary to establish some conditions for the exercise of political rights, so it proclaimed citizens as active and passive. Active citizens had the right to vote without any qualifications; passive citizens were those who voted with a low property qualification. Voting was in two stages; the active citizens assembled by cantons to choose the electors (one for every 150 people); the electors assembled by departments to choose the 745 members of the Assembly.

The legislature was to last two years and the King had no power to prolong it or dissolve it, and at the end of this term, a new election followed naturally. The legislature might adjourn itself, but during the period of adjournment, the King

30 Ibid., 202
might at certain times convoke it. The deputies were considered as representatives of the entire nation, and therefore not bound by instructions from their constituents. The legislature was given the right to exercise the legislative power conjointly with the King. The representatives gave or refused freely their consent to all taxation; they voted the laws; decided the budget; ratified treaties; and had the right to bring before a High Court the Ministers, public officials and all accused of attempts or conspiracies against the safety of the State or Constitution. Its executive power was only limited by the King's suspensive veto, which did not extend to financial bills. Its consent was necessary to proclaim war, and to ratify treaties of peace, commerce, and alliance; but was debarred from any exercise of judicial power.

The unicameral system was preferred to the bicameral system of England for two reasons: (1) the desire to fuse the deputies of the three estates into a single national assembly; (2) the difficulty of finding in a nation in which privileged classes no longer exist the elements with which to form an upper and a lower house. Thus France had produced a second factor to check the power of absolutism in France.

31 Brissaud, 552
32 de Hauranne, 61
33 Brissaud, 552
CHAPTER IV
ORGANIZATION OF THE JUDICIAL POWER

Whenever a small or large group of people participate in a game, a debate, or in business, they must be governed by rules or laws. Some person or persons are chosen or vested with authority to have the final decision whenever there is confusion on the meaning of the rules. In all units of government, an agency or a person is needed to interpret the laws and to determine the penalties that should be placed on those who disobey the laws. After the law has been interpreted, questions concerning punishment for offenders arise. To decide such questions a judicial or court system has been established by the governments of the nations.

To Frenchmen in 1789, justice seemed the most important part of good government. There was nothing about which the cahiers were so unanimous as the need for judicial reform. When they spoke of a single law for the whole country under which the abuses of authority would be impossible, they thought of a civil and criminal code to put an end to the cruelties and injustices of the old courts. The judicial system as well as the administrative system of France had grown up in the course of ages;

1 Thompson, 144
had never been revised on broad principles; and had ended in confusion and waste of power. The old system was cumbrous and complicated. There was complaint of the excessive number of courts—ecclesiastical, seignorial (about 80,000,000), administrative, and exceptional. A suitor sometimes remained suspended for long years since appeals and petitions leading him from one court to another made lawsuits endless. The penalties inflicted ranged from small fines to execution by hanging. Frequently, those led to one court found themselves deprived of their natural judges; also, the tribunals were not easily accessible, and public law was still impeded with remnants of feudalism. While the old magistracy, as a whole, was distinguished for its integrity, the sale of judgeships and the extravagant judicial fees could not fail to cast a shadow over its good name.

As the King increased his power over the nation, he also exercised in an increasing degree judicial authority. He considered it one of the essential functions of the King. He is judge of all his subjects, and according to an expression of the fifteenth century, he is the grand debiteur de justice. In all the provinces, although sometimes concealed under diverse pretexts, the hand of the King was working through his intendant

2 Brissaud, 559
3 Great obligor of justice
judging civil cases, and pronouncing grave penalties—the galley or death. During the medieval period courts had multiplied so that every lord had the right and duty of holding a court for his tenants. Feudal, corporate, and ecclesiastical courts left little for the royal courts. By degrees, the royal courts overspread France and withdrew the business from the other courts. Duty and interest compelled the Kings of France to assume this new power.

The notion that the King was the head of all justice was a recognized fact to the people. Philip I made it a solemn obligation for the King to preserve for himself and his successors the office of sole custodian of law. "It is your right to guard whole and entire the law of the land" was the last recommendation of the dying Louis XIV to his successor. Charles V on his deathbed had the crown carried to him and addressed it with this apostrophe: "And you, Crown of France, how precious you are ... precious at an inestimable price, since the secret of justice resides within you. Royalty and the administration of justice were two factors which tradition had cemented together. Ordinarily, the King commissioned the power of judging to his court, and in the provinces, the King delegated this

4 The Cambridge Modern History, 46
5 Viollet, 210
mission to his officers; but nevertheless, this did not detract from his character as judge. He held the power of judging doubtful cases, and he alone could pronounce the death penalty. To the people of France this power appeared in a different light than we consider it since the King was considered as having the power of life and death over his subjects. According to some, he had the power of putting to death one-third of his subjects, of torturing another third, and of assuring tranquillity and peace to the other third. In the cahiers, the third estate expressed its condemnation of this apparent justice.

This absolute conception of loyalty resulted in fruitful movements which further enlarged and consolidated the power of the King. All jurisdiction of the provinces was to be submitted to royal authority since this would give the King the power of diverse control. The writ of appeal was considered one of the most important functions of the judicial system, and as it developed it augmented the King's power. For during the Middle Ages if a vassal was refused justice by his lord, he could ask justice from the King. Messages then were sent directly from King to vassal.

During the ancien régime justice was sometimes

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6 de Hauranne, 7
7 Viollet, 212
arbitrary as in the *lettres de cachet*, and often unequal when
cases were moved from one court to another, and always very slow
and very costly. In the literature of the day, public opinion
was aroused toward the rigor of the criminal law, and against a
mode of criminal trial which was directed toward the doom of the
accused. In this respect, the Revolution had much to reform.

There were in France parlements, or courts, which had
too much or too little political power to be satisfied with just
being judges. Discord prevailed among the judges; they quarreled
about their origin and their functions. Sometimes they issued
proclamations making known the will of the King; at other times
they forbade the execution of the King's orders. When they re-
sisted obstinately, after a certain number of royal commands, to
register his edicts, the King, accompanied by princes, peers,
and a few notables, went to the parlement. There he made them
strike out all decrees contrary to his will and insert the
edicts he desired. These provincial parlements had been organ-
ized in the late Middle Ages and were members of the parlement
of Paris. The parlements were powerful instruments of unity
and centralization, since the King could suspend them or im-
prison the ministers if they went against his wish. He delegat-
ed justice to the parlements, but he did not alienate his power

8 Higgins, 3-4
of judging; he reserved to himself the judgment of important decisions. If the parlement of Paris arrested, the King remained the sovereign judge on the case. It expressed its authority once when it stated that the French monarchy "would be reduced to a state of despotism if the ministers continued to abuse the authority of the King by disposing of persons through lettres de cachet, of property by the lits de justice; by suspending the courts of justice by exile." The King responded that the members of parlement were not the true interpreters of the people. In the parlement seats were held by the princes of royal blood, the peers of the kingdom, the grand officers of the crown, prelates, marshals of France, governors of provinces, the councilors of state, two magistrates of the Chambre des comptes of Paris, and a deputy of each provincial parlement.

Soon, however, the parlement of Paris broke their silence and threw off their respectfulness. It demanded that the state of finances should be given to it since it should know the amount of revenue in order to estimate the expenditures. If the parlement tried to attack an abuse or place a restraint on royal authority, the King considered this as an attempt to curb

9 Viollet, 222
10 de Hauranne, 8
11 Tocqueville, 86
his authority and resisted energetically. If, on the contrary, the parlement defended some inequality which the King desired to abolish but was powerless to do so, he then ceded full authority to the parlement to obtain his wish.

Finally, behind the Chatelet and parlements stood the ultimate court of appeal, the Conseil du Roi, the center of justice in France. The King's council also possessed no small part of the judiciary powers. The custom of removing private causes from the regular courts, and trying them before one or another of the royal councils, was a great and growing one. This appellate jurisdiction was due in theory partly to the doctrine that the King was the origin of justice; and partly to the idea that political matters could not safely be left to ordinary tribunals. The notion that the King owes justice to all his subjects and that it is an act of grace, perhaps even a duty on his part, to administer it in person when it is possible to do so, is as old as the monarchy itself. Thus the ancient custom of seeking justice from a royal judge merely served to transfer jurisdiction to an irregular tribunal. Its circumference embraced a complicated system of departmental courts with subordinate and embarrassing jurisdiction. In 1789, reformers agreed

12 Higgins, 67
that the number of courts must be reduced. There must be an end of private and privileged jurisdictions. Magistrates must no longer be obtained by heredity or by purchase. Bribery must be abolished.

The first proposal for reform came from the group that had supported a second chamber and the absolute veto. Bergasse presented the outline for a new judicial system on August 17. Since the time of Montesquieu, it was a known fact that a judicial power should exist independent of the legislative and executive power. Bergasse's plan was to keep the judiciary distinct from the executive and the legislative, wholly to abolish purchase, to abolish the penalty of confiscation and introduce an element of popular election by appointment. At first, there was hesitation in recognizing the judicial power as distinct from the executive. However, the Constitution followed the doctrine of Montesquieu and adopted the system of election of judges. The question of judicial power, as all other questions, was discussed in long debates. However, the men of 1789 set down their decisions very briefly in the Constitution of 1791. Twenty-seven articles lay down the charter of revolutionary justice. The judiciary is to remain independent of the

13 Thompson, 147
legislature and executive. Justice will be administered free of charge by justices elected from time to time by the people. Judges of every degree were elected. To those drafting the constitution this was a return to primitive rights. Bourke stated "until the year 697 ... the people had chosen their own judges, and from this year they began to lose their rights." The people were to take back once again the power usurped by the King.

The judicial power thus created was not a true political power. Political powers organize and conduct society. The judicial power, bound by law, interprets and applies law and does not have the spontaneity, the initiative, the power of direction and organization. In principle, the structure of the judiciary should not change from generation to generation since it remains outside political institutes. However in 1789, the revolution was so profound that it touched the judicial power as well as all others.

Judicial reorganization was modeled first on the principle that all powers emanated from the nation. Thus, as in the other powers, the sovereignty of the people was applied to the judiciary. The people delegated its power to the judges, and asked in return a just dealing from them. Here the people had

14 Appendix IV
15 Madelin, 126
16 Deslandres, 120-121
taken the place of the King. The second principle rigorously applied was the separation of powers. "The judicial power," states the constitution of 1791, "is not able in any case to be exercised by the legislative or the King." The same independence is given to the legislative departments. The third principle applied in the domain of justice was the abolition of arbitration. Articles IV to XIX of the judicial power develop minutely the individual liberty of the people. Another characteristic of the new system was the rendering of justice gratuitously.

Finally, the judicial system established two new institutions--the Supreme Court of Appeal, and the High National Court. The Supreme Court of Appeal was to pass judgment on cases which expressed a contradiction in law. All law in France had been unified, and a supreme magistrate was needed to interpret the law. It was obliged to render equal sentences on like cases from different tribunals. It was considered indispensable for the just function of justice. The High National was formed of members of the Supreme Court of Appeal and exercised jurisdiction over members and actions which disturbed the general stability of the nation. It consisted of a court and a jury which

17 Appendix IV
18 Ibid.,
19 Deslandres, 123
exercised authority either over men occupying high State positions, or over crimes committed against the State itself. Thus the constitution had found an institution to guarantee the nation against men too powerful, or of crimes too grave to be judged by ordinary judges. The King's council which had possessed strong judiciary power were now responsible to the legislative body under the new constitution. Thus the separation of powers struck a serious blow at the jurisdiction of the council.

The new administrative divisions served as judicial divisions also, and the King was refused the power to interfere in any way in the elections. The old courts including the parlements were one after another abolished. In each district, there was a civil judge and a criminal court whose justices were elected by the electors of the district. Each district was divided into cantons which held primary elections to elect justices of the peace for trying petty cases, and to prevent lawsuits. Superfluous courts and the inheritance of judges thus disappeared from France.

Thus much remedial legislation accompanied this new framework. The procedure of a trial was rendered more favorable to the accused since trial by jury as in England was adopted in

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20 The Cambridge Modern History, 206
criminal cases; every department was now equipped with a grand jury. Under the old system the maxim, "all justice emanates from the King" now became "all justice emanates from the nation." Justice was now rendered in the name of the State. Securities were taken against arbitrary arrest and imprisonment, and the law was made the same for all without distinction of persons.

A new penal code, similar to the criminal law in force in other countries, was drawn up. Heresy and magic were no longer recognized as crimes. Torture was abolished; and the punishment of death, formerly meted out for slight offences, was confined to four or five grave offences. In criminal matters, after the accusation is admitted, it must be recognized and declared by the jury. The trial will be public, and the help of a consul may not be refused the accused person. Any one acquitted by a legal jury may never be retaken or accused for the same fact.

All men seized and led before the police must be examined immediately or at least within twenty-four hours. If he is not found guilty, he must be freed immediately; if he is, and is able to give sufficient bond where the law permits him to be free, he must be freed.

The commissaire of the King would examine the

22 Brissaud, 560
23 Cahen, 42-44
decision given by the Supreme Court of Appeal and the High National Court and see that the judgment was executed. If the minister of Justice exceeded the bounds of power, he would be denounced to the High Court of Appeal through the commissionaire of the King. If he were accused of treason, the crime would go to the legislative body who would render a secret decision and return it to the High National Court.

The Constitutional Assembly, considering the judicial power as one of the manifestations of national sovereignty believed that those who exercised it should be elected, pass certain qualifications, and have some experience. In the ancien régime, most of the municipal officers did not know how to read or write and could not understand the complicated decrees and instructions which came from Paris. Therefore, the Assembly provided that no one could be selected as a judge who was not twenty-five years of age, and had not practiced law for five years. The term of office was six years.

The principle that a tribunal consists of several judges was preserved from the ancient régime, but decrees of jurisdiction were abolished since all tribunals were now equal and appeals could be taken from one court to another. Three

24 Ibid., 45
25 Taine, 199
kinds of tribunals were created: ordinary or district courts, justices of peace, and a Court of Review. The new judges discarded the wig and gown of the old régime. The Court of Review was to insure a uniform interpretation of the law throughout all the State. Thus the uniformity of decisions was recognized as a necessary compliment of legislative unity. However, if the power of judging were not separate from the legislative and executive powers, there would be no liberty of the power of judging. If it were joined to the legislature, the life and liberty of the subject would be exposed to arbitrary control; for the judge then would be the legislator. If it were joined to the executive power, the judge might behave with all the violence of an oppressor. From the simplified judicial organization with which the Constitutional Assembly endowed the country, certain consequences followed; namely, the abolition of exceptional courts, and jurisdiction privileges. All citizens were obliged to sue before the same judges and according to the same form.

The separation of the judicial branch from the executive and legislative produced three important results in France.

26 Higgins, 41
27 Brissaud, 561
1. Justice could not be administered by the King, nor in general by the holders of executive power, nor by the legislative body.

2. Conversely, the judges could not bring the members of the administration before them for acts done in their offices. The decisions of administrative controversies were entrusted to the administrative bodies themselves.

3. The judge could not meddle in the exercise of legislative power whether by jurisdiction or the execution of laws, nor could they pass upon the Constitutionality of laws. 28

The separation of powers was now completed. Three distinct organs of government were substituted for the fountainhead of all authority—the King's will.

28 Ibid., 563
CONCLUSION

The Constitution of 1791 was a protest against absolute power; therefore, this power was weakened by dividing it. Evolution in government had made rapid strides in France from the opening of the States General, May 5, 1789 until the acceptance of the constitution by the King, September 14, 1791. Step by step in the hierarchy of government, power had slipped downward and henceforth belonged by virtue of the Constitution of 1791 to the authorities who sat at the bottom of the ladder. The constitution itself was not an impractical instrument; in some respects it deserved and received universal approval. If it left much to be desired, it must be remembered that much was demanded. It abolished feudalism partially, privilege almost entirely, and absolutism altogether. It created a kind of social and political equality before the law, and it attempted to create equality of opportunity, and to abolish arbitrary arrest.

The majority of Frenchmen felt that the Revolution would end when the Constitution was adopted, since it would remove from France all the grievances of the ancien régime, and give to France a modified form of monarchical government to which the majority were sincerely attached. The new constitu-
tion organized the government of France upon the principle of the separation of powers. The King was reduced to the position of an honorary president. He would have in the future no control over the administrative departments which he must direct. All means of control over the legislature were taken from him; therefore, no harmony could exist between the executive and the Assembly. The legislative National Assembly now consisted of only one chamber and its sessions were to be continual. There were thirty-four equal provinces out of which eighty-three departments were created. Each department was again divided into districts and each district into cantons. Now representation according to population was granted.

To give a new form of government to a kingdom which had endured for many centuries was a gigantic undertaking, and especially since there was scarcely an institution in France which did not need to be renovated. In France, moreover, reform had been so long delayed that when it came society collapsed. The Constitution preserved some fragments of the old system, but failed to harmonize them with the new. According to the treatment of the King rendered by the constitution, the principle of monarchy must be absurd and immoral. The King was deprived of winning the confidence of the legislature for he might not take its chiefs to be his ministers. His veto on
bills was merely suspensive; his part in foreign relations was merely subordinate. He was the chief of an administration which would not act; and of an armed force which would not obey. They thought a weak executive was essential to freedom, and regarded the King as a disarmed enemy who must be kept impotent.

The Constitutional Assembly consisted of sages, like Mounier; thinkers, like Sieyes; partisans, like Barnave; statesmen, like Talleyrand; and men like Mirabeau. Each was inspired, and felt himself urged on, without a king, without a leader, without an army, without any other strength than their deep conviction, to accomplish his work—the placement of power which for centuries had been misplaced. But the work carried the workers beyond their intentions. Government instead of being a function became a possession; the King, master instead of being a chief. The people became a nation; the King a crowned magistrate. The nation in an assembly declared its will, and the hereditary and irresponsible King executed it. His office was a concession to custom, and he has been described as a "majestic inutility" in the Constitution. A King had been placed at the summit of its institutions so that the kingdom would not be called a republic.

When Louis XVI accepted the Constitution which weakened the royal power which he had received from his ancestors,
he was sincere and harbored no secret thought of a reaction towards the past; but was distrustful toward the new institutions. On September 30, 1791, President Thouret solemnly pronounced these words before all his colleagues: "The National Assembly hereby declares that its mission is completed, and that at this moment its sittings end." The work it had produced—a Constitution based on the separation of powers—was thought to ensure the happiness of France. But how shortsighted was this far seeing prophetic nature of the Assembly!
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APPENDIX
APPENDIX I

REPORT OF THE EXAMINATION OF THE CAHIERS
MADE BY M. CLERMONT-TONNERRE ON JULY 27, 1789

Declared Principles of the Cahiers

Article 1. The French Government is monarchical.
2. The King's person is inviolable and sacred.
3. His crown is hereditary in the male line.
4. The King is the despository of the executive power.
5. Agents of authority are responsible.
6. The royal sanction is necessary for the promulgation of laws.
7. The nation makes the law with the royal sanction.
8. National consent is necessary for loans and taxes.
9. Taxes may be granted only from one meeting of the States General to the next.
10. Property shall be sacred.
11. Individual liberty shall be sacred.

1 Andrews, 17
APPENDIX II

REPORT OF THE EXAMINATION OF THE CAHIERS
MADE BY M. CLERMONT-TONNERRE ON JULY 27, 1789

Partial Agreement of the Cahiers

Article 1. Has the King legislative power limited by the Constitutional laws of the kingdom?

2. May the King alone make provisional police and administrative laws in the interval between the meeting of the States General?

3. Shall these laws be submitted to the free registration of the sovereign courts?

4. May the States General be dissolved only by themselves?

5. May the King alone convoke, prorogue, and dissolve the States General?

6. In the case of dissolution, is the King obliged to summon a new convocation immediately?

7. Shall the States General be permanent or periodic?

8. If they are periodic, shall there be an intermediary commission?

9. Shall the two upper orders be united in a single chamber?

10. Shall the two chambers be formed without distinction of orders?

2 Andrews, 17-18
11. Shall the members of the order of the clergy be divided between the other two orders?

12. Shall the representations of the clergy, the nobles and the commons, be in the proportion of one, two, and three?

13. Shall a third order be established under the name of the order of the peasantry?

14. May persons having commissions, employment, or places at the court be deputies to the States General?

15. Shall a two-thirds vote be necessary to pass a resolution?

16. Shall taxes for the liquidation of the national debt be collected until it is completely paid?

17. Shall lettres de cachet be abolished or modified?

18. Shall liberty of the press be limited or unlimited?
APPENDIX III

DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN.

The representatives of the French people, constituted as a National Assembly, considering that ignorance, forgetfulness, or contempt of the rights of man are the sole causes of public misfortunes and the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man, in order that this declaration, recall to them at all times their rights and duties; in order that the acts of the legislative power and of the executive power, being at each instant open to comparison with the aims of all political institutions, may be more respected; and in order that the demands of citizens, founded henceforth on simple and incontestable principles, shall tend always to the maintenance of the constitution and the happiness of all.

Accordingly, the National Assembly accepts and declares, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Article I. Men are born and remain free and equal in rights. Social distinctions can be founded only upon common utility.

II. The purpose of all political association is the safeguarding of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

III. The principle of all sovereignty resides essentially in the nation. No body, no individual, can exercise any authority which does not expressly emanate from it.

IV. Liberty consists in freedom to do all that does not harm others. Thus the exercise of the natural rights of man has no other limits than those which assure other members of society the enjoyment of these same rights. These limits can be determined only by law.

V. The law has the right to forbid only those actions which are harmful to society. All that is not forbidden by law cannot be prevented; and no one can be constrained to do what it does not command.
VI. The law is the expression of the general will. All citizens have the right to assist personally, or through their representatives, in its formation. It ought to be the same for all, whether it protects or whether it punishes. All citizens, being equal in its eyes, are equally admissible to all dignities, places, and public positions according to their capacity, and without other distinctions than those of their virtues and talents.

VII. No man can be accused, arrested, or detained except in cases determined by the law, and according to the forms that it has prescribed. Those who solicit, expedite, or execute arbitrary orders, or have them executed, should be punished; but every citizen, summoned or seized by virtue of the law, ought to obey instantly. He renders himself culpable by resistance.

VIII. The law should establish only those punishments which are strictly and evidently necessary; and no one can be punished except by virtue of a law established and promulgated previous to the offense and legally applied.

IX. As every man is presumed innocent until he has been declared guilty, when it is deemed indispensable to make an arrest, all severity not necessary for making sure of the person should be rigorously repressed by law.

X. No one should be disturbed on account of his opinions, even in regard to religion, provided their manifestation does not disturb the public order established by law.

XI. The free communication of thought and opinion is one of the most precious rights of man. Every citizen can then speak, write, and publish freely; but he shall be responsible for the abuse of this liberty in cases determined by law.

XII. The guaranteeing of the rights of man and of the citizen necessitates a public force. This force, is then instituted for the advantage of all, and not for the special use of those to whom it is confided.

XIII. For the maintenance of the public force and for the expenses of the administration, a common contribution is indispensable. It ought to be equally distributed among all citizens, according to their means.
XIV. All citizens have the right of verifying, themselves, or through their representatives, the necessity of the public contribution, of consenting to it without compulsion, of seeing how it is employed, and of determining the quota, assessment, payment, and duration.

XV. Society has the right to demand from every public agent an account of his administration.

XVI. A society in which a guarantee of rights is not assured, nor the separation of powers set forth, has no constitution.

XVII. Property being a sacred and inviolable right, no one can be deprived of it, except when public necessity, lawfully ascertained, evidently demands it, and then only after previous and just indemnity has been rewarded.
APPENDIX IV

EXCERPTS FROM THE CONSTITUTION OF 1791

THE NATIONAL ASSEMBLY, wishing to found the French constitution upon the principles which it has just recognized and proclaimed, irrevocably abolishes the institutions harmful to liberty and the equality of rights.

There is no longer any nobility, peerage, hereditary distinctions, distinctive orders, feudal regime, patrimonial justices, any of the titles denominations, or prerogatives derived from them, any order of knighthood, any organizations or decorations which require proofs of nobility, or which presuppose distinctions of birth, or any other superiority than that of public officials in the exercise of their functions.

There is to be no longer any sale or inheritance of public offices.

There is to be no longer, for any part of the nation or for any individual, either privilege or exception under the law common to all the French.

There are to be no longer any wardenships or corporations of professions, arts, and trades.

The law does not henceforth recognize any religious vow or any other engagement which shall be in conflict with natural rights or with the constitution.

CHAPTER I

OF THE LEGISLATIVE ASSEMBLY

I. The National Assembly, forming the legislative body, is permanent, and consists of one chamber only.

II. It shall be formed by new elections every two years. Each period of two years shall form one legislature.

III. The dispositions of the preceding articles shall not take place with respect to the ensuing legislative body, whose powers shall cease the last day of April, 1793.

IV. The renewal of the legislative body shall be matter of full right.

V. The legislative body cannot be dissolved by the king.
CHAPTER II
OF THE ROYALTY AND OF THE MINISTERS

SECTION I

Of the Royalty and the King

I. The royalty is indivisible, and delegated hereditarily to the race on the throne, from male to male, by order of primogeniture, to the perpetual exclusion of women and their descendants. Nothing is prejudged respecting the effect of renunciations, in the race on the throne.

II. The person of the King is sacred and inviolable; his only title is KING OF THE FRENCH.

III. There is no authority in France superior to that of the law. The king reigns only by it, and it is only in the name of the law that he can require obedience.

IV. The King, on his accession to the throne, or at the period of his majority, shall take to the nation, in the presence of the legislative body, the oath TO BE FAITHFUL TO THE NATION, AND TO THE LAW; TO EMPLOY ALL THE POWER DELEGATED TO HIM TO MAINTAIN THE CONSTITUTION DECREED BY THE NATIONAL CONSTITUENT ASSEMBLY IN THE YEARS 1789, 1790, and 1791, AND TO CAUSE THE LAWS TO BE EXECUTED.

If the legislative body shall not be assembled, the king shall cause a proclamation to be issued, in which shall be expressed this oath, and a promise to repeat it as soon as the legislative body shall assemble.

VII. If the king, having gone out of the kingdom, does not return on the invitation of the legislative body, and within the delay fixed by the proclamation, which cannot be less than two months, he shall be deemed to have abdicated.

The delay shall commence from the day when the proclamation of the legislative body shall have been published in the place of its sitting; and the ministers shall be obliged, under their responsibility, to perform all the acts of the executive power, the exercise of which shall have been suspended in the hands of the absent king.
SECTION III

Of the Royal Family

V. The members of the royal family, called to the eventual succession to the throne, enjoy the rights of an active citizen, but are not eligible to any places, employs, or functions in the nomination of the people.

Excepting the places of ministers, they are capable of offices and employs in the nomination of the king; however, they cannot be commanders-in-chief of any army or fleet, nor fulfill the functions of ambassadors, without the consent of the legislative body, granted on the proposition of the king.

SECTION IV

Of Ministers

I. To the king alone belongs the choice and revocation of ministers.

II. The members of the present National Assembly, and succeeding legislatures, the members of the tribunal of annulment, and those who shall serve in the high jury, cannot be advanced to the ministry, nor receive any offices, gifts, pensions, salaries, or commissions from the executive power, or its agents, during the continuance of their functions nor during the two years after having finished the exercise of them.

The same shall be the case with respect to those who shall be only inscribed in the list of the high jury, during all the time that their inscription shall continue.

CHAPTER III

OF THE EXERCISE OF THE LEGISLATIVE POWER

SECTION I

Powers and Functions of the National Legislative Assembly

I. The constitution delegates exclusively to the legislative body the powers and functions following:

1. To propose and decree laws; the king can only invite the legislative body to take an object into consideration.

2. To fix the public expenses.
3. To establish the public contributions—to determine their nature, quantity, duration, and mode of collection.

4. To divide the direct contribution among the departments of the kingdom—to superintend the employ of all the public revenue, and to demand an account of it.

II. War cannot be determined on but by a decree of the legislative body, passed on the formal and necessary proposition of the king, and sanctioned by him.

In the case of imminent or commenced hostilities, of an ally to be supported, or of a right to be preserved by force of arms, the king shall notify the same without delay to the legislative body, and shall declare the reasons of it.

If the legislative body decides that war ought not to be made, the king shall immediately take measures to stop or prevent all hostilities, the ministers being responsible for delays.

During the whole course of the war, the legislative body may require the king to negotiate peace, and the king is bound to yield to the requisition.

III. It belongs to the legislative body to ratify treaties of peace, alliance, and commerce; and no treaty shall have effect but by this ratification.

IV. The legislative body has the right of determining the place of its sittings, of continuing them as long as it shall think necessary, and of adjourning; at the commencement of each reign, if it be not sitting, it shall be bound to meet without delay.

It has the right of police in the place of its sittings, and to such extent around it as shall be determined.

It has the right of discipline over its members; but it can pronounce no heavier punishment than censure, arrest for eight days, or imprisonment for three.

It has the right of disposing, for its safety, and the respect that is due to it, of the forces which shall be placed, by its consent, in the city where it shall hold its sittings.

V. The executive power cannot march, or quarter, or station any troops of the line within thirty thousand TOISÉS of the legislative body, except on its requisition, or by its authority.

SECTION II

Holding of the Sittings, and Form of Deliberating

VII. The legislative body cannot deliberate if the meeting does not consist of at least two hundred members; and no decree shall

3 About thirty-six miles
be made except by the absolute majority of votes.

X. The king shall refuse his sanction to the decrees whose preamble shall not attest the observance of the above forms; if any of those decrees be sanctioned, the ministers shall neither put to it the seal, nor promulgate it, and their responsibility in this respect shall continue six years.

SECTION III

Of the Royal Sanction

I. The decrees of the legislative body are presented to the king, who may refuse his assent to them.

II. In the case of a refusal of the royal assent, that refusal is only suspensive.

When the two legislatures which shall follow that in which the decree was presented shall successively represent the same decree in the same terms in which it was as originally conceived, the king shall be deemed to have given his sanction.

III. The assent of the king is expressed to each decree by the following formula, signed by the king: THE KING CONSENTS AND WILL CAUSE TO BE EXECUTED.

The suspensive refusal is thus expressed: THE KING WILL EXAMINE.

IV. The king is bound to express his assent or refusal, to each decree, within two months after it shall have been presented.

V. No decree to which the king has refused his assent can be presented to him by the same legislature.

VI. The decrees sanctioned by the king, and those presented to him by three successive legislatures, alone have the force of a law, and bear the name and title of LAWS.

SECTION IV

Connection of the Legislative Body with the King

I. When the legislative body is definitively constituted, it shall send a deputation to inform the king. The king may every year open the session, and propose the objects, which, during its continuance, he thinks ought to be taken into consideration; this form, however, is not to be considered as NECESSARY to the activity of the legislative body.
III. A week, at least, before the end of each session, the legislative body shall send a deputation to the king, to announce to him the day on which it proposes to terminate its sittings. The king may come, in order to close the session.

IV. If the king find it of importance to the welfare of the state that the session be continued, or that the adjournment be put off, or take place only for a shorter time, he may send a message to this effect, on which the legislative body is bound to deliberate.

V. The king shall convokethe legislative body, during the interval of its session, at all times when the interest of the state shall appear to him to require it, as well as in those cases which the legislative body shall have foreseen and determined, previous to their adjournment.

VIII. The legislative body shall cease to be a deliberating body while the king shall be present.

IX. The acts of correspondence of the king with the legislative body shall be always countersigned by a minister.

CHAPTER IV

Of The Exercise of the Executive Power

I. The supreme executive power resides exclusively in the hands of the king.

The king is the supreme head of the general administration of the kingdom: the care of watching over the maintenance of public order and tranquillity is entrusted to him.

The king is the supreme head of the land and sea forces.

To the king is delegated the care of watching over the exterior security of the kingdom, and of maintaining its rights and possessions.

II. The king names ambassadors, and the other agents of political negotiations.

He names two-thirds of the rear-admirals, and one-half of the lieutenant-generals, camp-marshalss, captains of ships, and colonels of the national gendarmerie.

He superintends the coinage of money, and appoints the officers entrusted with this superintendence in the general commission and the mints.

III. The king orders letters patent, brevets, commissions to be delivered to all the public officers that ought to receive them.

IV. The king orders a list of pensions and gratifications to be made out, for the purpose of being presented to the legislative body each session, and decreed, if there is reason for it.
SECTION I
Of the Promulgation of Laws

I. The executive power is charged with ordering the seal of state to be put to laws, and causing them to be promulgated. It is equally charged with causing to be promulgated and executed those acts of the legislative body which have no need of the sanction of the king.

II. Two copies of each law shall be made, both signed by the king, countersigned by the minister of justice, and sealed with the seal of state. The one shall be deposited in the archives of the seal, and the other shall be sent to the archives of the legislative body.

SECTION III
Of External Connections

I. The king alone can keep up foreign political connections, conduct negotiations, make preparations of war proportional to those of neighboring states, distribute the land and sea forces as he shall judge most suitable, and regulate their direction in case of war.

II. Every declaration of war shall be made in these terms:
BY THE KING OF THE FRENCH IN THE NAME OF THE NATION.

CHAPTER V
Of the Judicial Power

I. The judicial power can in no case be exercised either by the legislative body or the king.

II. Justice shall be gratuitously rendered by judges chosen for a time by the people, and instituted by letters patent of the king, who cannot refuse to grant them. They cannot be deposed, but for forfeiture duly judged; nor suspended, but for an accusation admitted.

The public accuser shall be named by the people.

V. The right of the citizens to terminate definitively their disputed by way of arbitration shall receive no infringement from the acts of the legislative power.

VI. The ordinary courts of justice cannot receive any civil action, until it be certified to them that the parties have appeared, or that the pursuer has cited the opposite party to appear before mediators, to endeavor to bring about a reconciliation.
VII. There shall be one or more judges of peace in the cantons and in the towns. The number of them shall be determined by the legislative power.

VIII. It belongs to the legislative power to regulate the number, and extent of jurisdiction, of the tribunals, and the number of judges of which each tribunal shall be composed.

IX. In criminal matters, no citizen can be tried but on an accusation received by a jury, or decreed by the legislative body, in the cases where it belongs to it to pursue the accusation.

After the admission of the accusation, the fact shall be recognized and declared by a jury.

The jury which declares the fact cannot be of fewer than twelve members.

The application of the law shall be made by judges.

No man acquitted by a lawful jury can be retaken or accused on account of the same fact.

XI. Every man seized upon and conducted before an office of police shall be examined immediately, or at latest in twenty-four hours.

If it results from the examination that there be no ground for blame against him, he shall be directly set at liberty; or if there be ground to send him to a house of arrest, he shall be conducted there with the least delay possible, and that in any case cannot exceed three days.

XII. No man arrested can be detained if he give sufficient bail, in all cases where the law permits a man to remain free under bail.

XIV. No guard or jailor can receive or detain any man but in virtue of a mandate, order of arrest, decree of accusation, or sentence, mentioned in the tenth article above, nor without transcribing them to his own register.

XVII. No man shall be taken up or prosecuted on account of the writings which he has caused to be printed or published, whatever be their subjects, if he has not designedly provoked disobedience to the law, outrage to the established powers, and resistance to their acts, or any of the actions declared crimes or offenses by the law.

The censure of all the acts of the established powers is permitted; but voluntary calumnies against the probity of public officers, and against the rectitude of their intentions in the exercise of their functions, may be prosecuted by those who are the subjects of them.

Calumnies or injurious sayings against any kind of persons, relative to the actions of their private life shall be punished by prosecution.

XIX. There shall be, for the whole kingdom, a single tribunal of annulment established near the legislative body.
XXIV. The orders issued for executing the judgment of the tribunals shall be conceived in these terms:
"N. (the name of the king) by the grace of God, and by the constitutional law of the state, King of the French, to all present and to come, greeting. The tribunal of _______ has passed the following judgment:"

TITLE VII

Of The Revision of Constitutional Decrees

II. When three successive legislatures shall have declared an uniform wish for the change of any constitutional article, the revision demanded shall take place.

VII. The members of the assembly of revision, after having pronounced together the oath TO LIVE FREE OR DIE, shall individually swear TO CONFINE THEMSELVES TO DECIDING ON THE OBJECTS WHICH SHALL HAVE BEEN SUBMITTED TO THEM BY THE UNANIMOUS WISH OF THREE PRECEDING LEGISLATURES; AND TO MAINTAIN, IN OTHER RESPECTS, WITH ALL THEIR POWER, THE CONSTITUTION OF THE KINGDOM DECREED BY THE NATIONAL CONSTITUENT ASSEMBLY IN THE YEARS 1789, 1790, and 1791: AND TO BE IN ALL FAITHFUL TO THE NATION, TO THE LAW, AND TO THE KING.

None of the powers instituted by the constitution have a right to change it in its whole, or in its parts, excepting the reforms which may be made in it by the mode of revision, conformably to the regulations of title VII, above.

The National Constituent Assembly commits the deposit of it to the fidelity of the legislative body, of the king, and of the judges, to the vigilance of fathers of families, to wives and to mothers, to the attachment of young citizens, to the courage of all Frenchmen.