

**THE YEAR 1848 IN FRANCE. A FEW REMARKS AT THE 170TH  
ANNIVERSARY OF THE ADOPTION OF THE CONSTITUTION  
OF THE SECOND FRENCH REPUBLIC IN 1848  
PART II**

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ABSTRACT

The article is a continuation of the discussion undertaken on the occasion of the 170th anniversary of the Constitution of the Second French Republic. The author analyses the events that took place in France in the period between the shutdown of the national workshops in June 1848 and the adoption of the Constitution of the Second French Republic in November of the same year. A significant part of this article is the analysis of the provisions of the Constitution, with particular emphasis on the analysis of the institution of the President of the Republic, introduced for the first time to French constitutionalism.

**Key words:** Spring of Nations, year 1848, June Days uprising, constitution, President of the Republic, Louis-Napoléon

I

In the previous article I analysed the causes that led to the eruption of revolutionary events in Europe in 1848, and traced a number of them – mainly in France – paying particular attention to the scope of political and social reforms carried out between the outbreak of the February Revolution and the shutdown of the so-called national workshops in June 1848.

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The starting point for the present discussion is the moment when the Executive Commission gave a kind of ultimatum to thousands of Parisian workers: “either die of hunger or start an attack”<sup>1</sup>, which of course refers to the shutdown of these miserable workplaces.

The proclamation of the decree closing the workshops triggered an immediate reaction in the form of demonstrations that took place on the same day<sup>2</sup>. A day later, a great demonstration under the slogan “work and bread” took place, and on 23 June, more than eight thousand workers started to build barricades in different parts of the city<sup>3</sup>. Events then unfolded rapidly.

On 24 June the National Assembly declared a state of siege in Paris<sup>4</sup>, dissolved the National Committee the Executive Commission and, in view of growing unrest in Paris, transferred dictatorial power to General L.E. Cavaignac, the then Minister of War<sup>5</sup>. As early as on 25 June the

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<sup>1</sup> K. Marks, *Walki klasowe we Francji od 1848 r. do 1850 r.*, In: K. Marks, F. Engels, *Dzieła wybrane*, Volume I, Warszawa 1949, p. 150.

<sup>2</sup> See G. Ziegler, *Paryż i jego rewolucje*, translated by H. Łochocka, Warszawa 1972, p. 87.

<sup>3</sup> See *ibidem*, s. 87; P. de la Gorce, *Histoire de la Seconde Republique*, Volume I, Paris 1919, pp. 331-350; Ch.H. Pouthas, *Od 1815 do 1878*, In: G. Lefebvre, Ch.H. Pouthas, M. Baumont, *Historia Francji*, Volume II: *od 1774 do czasów współczesnych*, translated by M. Derenicz, Warszawa 1969, p. 307; F. Engels, *23 czerwca*, In: K. Marks, F. Engels, *Dzieła*, Volume V, Warszawa 1962, pp. 135-139.

<sup>4</sup> In the French legal system, the state of siege (*état de siège*) is a constitutional and statutory instrument for the transfer of police powers to military authorities, the creation of military jurisdictions and the extension of police powers. It is assumed that the prototype of this legal institution was the Law of 10 July 1791 on the protection and classification of war sites and military stations, police fortifications and other similar facilities (*Loi du 10 juillet 1791 concernant la conservation et le classement des places de guerre et postes militaires, la police des fortifications et autres objets y relatifs*). On the basis of a delegation under Article 106 of the Constitution of the French Republic of 4 November 1848, the first siege law (*Loi du 9 août 1849 sur l'état de siège*) was passed on 9 August 1849, under which the siege may be declared by the National Assembly and, in the intervals between its sessions, by the President. This law enabled the military authorities to bring political criminals to the war tribunal and authorised them to enter every house day and night and to search, confiscate weapons and expel any person not living in the place where the state of siege was declared, see <https://www.legifrance.gouv.fr> [retrieved: 23 September 2018].

<sup>5</sup> See P. de la Gorce, *op. cit.*, pp. 351-362; F. Engels, *24 czerwca*, In: K. Marks, F. Engels, *Dzieła*, Volume V, *op. cit.*, pp. 140-145; *idem*, *Rewolucja czerwcowca*, In: K. Marks, F. Engels, *Dzieła*, Volume V, *op. cit.*, pp. 166-175. After suppressing the revolution,

fighting in the city was extremely fierce and bloody<sup>6</sup>, and on the next day – 26 June – the army eliminated last strongholds of resistance, executing hundreds of POWs<sup>7</sup>.

According to J. Baszkiewicz, a total of 5 000 people were killed on the streets of Paris during those few days, including 4 000 insurgents and 11 000 were sentenced to prison and sent to the colonies<sup>8</sup>.

Arrests and executions of insurgents – which happened for the first time on such a massive scale in the history of Paris – constituted a predictor and model for the repressions that would take place in Paris in 1871<sup>9</sup>.

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Cavaignac appeared in the National Assembly, relinquishing his dictatorial power, and “when the Assembly asked him to retain power and lead the government, he accepted this honour....and acted in accordance with his responsibilities, always considering himself to be the trustworthy person of the Congregation that entrusted power to him, and never once did anything to extend the boundaries of this power, he never refused to obey the Congregation that trusted his honesty”.

M. Czernyszewski, Cavaignac, In: idem, Wybór pism historycznych, translated by F. Borkowska, M. Wawrykowa, Wrocław 1959, p. 158.

<sup>6</sup> See P. de la Gorce, op. cit., pp. 362-381; F. Engels, 25 czerwca, In: K. Marks, F. Engels, Dzieła, Volume V, op. cit., p. 146-151.

<sup>7</sup> See P. de la Gorce, op. cit., pp. 381-390. A. de Tocqueville wrote that the June Uprising was the largest and most peculiar in the history of France, “the targets, because within four days more than a hundred thousand people fought, five generals were killed, the most peculiar, because the insurgents had no battle cries, flags or commanders, and yet they fought in the best order and with knowledge of things that surprised the old officers” idem, Wspomnienia, translated by A.W. Labuda, Wrocław 1987, p. 162.

<sup>8</sup> See J. Baszkiewicz, Historia Francji, Wrocław 1995, p. 490. Ch. Seignobos estimates the total number of arrests at 15 000, see idem, La Révolution de 1848 – Le Second Empire (1848-1859), In: E. Lavis, Histoire de France contemporaine: depuis la Révolution jusqu’à la paix de 1919, Volume VI, Paris 1921, p. 105. M. Żywczyński calls the repressions after suppressing the June Revolution “white terror”, idem, Historia powszechna 1789-1870, Warszawa 1975, p. 375, alluding to the terror used by the Thermidorians against M. Robespierre’s supporters and his allies during the French Revolution, see S. Clay, The White Terror, Reactions, and the Politics of Vengeance, In: A Companion to the French Revolution, ed. P. McPhee, John Wiley&Sons 2014, pp. 359-377; M. Konarski, Zamach stanu w perspektywie prawnohistorycznej na przykładzie Rewolucji Francuskiej 1789-1799, In: Przestępstwa przeciwko bezpieczeństwu i porządkowi publicznemu, ed. W. Lis, Lublin 2017, p. 48-50.

<sup>9</sup> Mass slaughters lasted until the first days of June, and collective executions until the middle of the month, while the total number of victims is estimated at almost 30 thou-

Perversely, the June Revolution, which – regardless of the perspective we look at it – was of strictly proletarian (social) – was mainly suppressed by units of the National Guard and the Mobile Guard, i.e. a new army recruited after the February Revolution by the Provisional Government from among the Parisian lumpenproletariat.

The June Revolution was then suppressed mainly by units of the National Guard and the Mobile Guard, i.e. a new army recruited after the February Revolution among young unemployed people in Paris by the Provisional Government<sup>10</sup>. It was internecine fighting<sup>11</sup>, the first “civil war” of modern Paris and the first armed action of the working class which – as M. Żywczyński emphasises – made the French bourgeoisie aware that there exists a separate social class, the working class”<sup>12</sup>.

As S. Salmonowicz notes, “one cannot deny that the bloody events in Paris in June 1848 were an expression of energetic and panicky action of all those who, fearing a revolutionary dictatorship, decided to brutally crack down on the people of the capital. These actions gained the support of the centre, as the revolutionary leaders in their public speeches referred to the idea of the years 1793-1794, arousing horror not only among the rich

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sand. As P.O. Lissagaray writes “elegant ladies went on excursions to see the corpses and, in order to satisfy their eyes with the fallen heroes, with the end of their umbrellas they lifted the sheets covering them”, idem, *Historia Komuny Paryskiej 1871 r.*, Warszawa 1950, p. 381; cf. J. Scherr, *Z krwawych dni (Komuna Paryska)*, translated by. Z.K., Warszawa 1906, pp. 127-128.

<sup>10</sup> The Mobile Guard consisted of 24 battalions, each of 1000 people recruited from 15-20 year olds, most of whom belonged to the lumpenproletariat, i.e. the social class, which, as Marx wrote, “is recruited from thieves and criminals of all kinds, is a group of people living from the waste of social wealth, people without specific occupation, vagabonds, gens sans feu et sans aveu [dark individuals, vagrants], idem, *Walki klasowe...*, p. 145.

<sup>11</sup> K. Marx writes that “before the June Revolution, when these young guards, recruited from the lowest layers of the Parisian proletariat, crossed the streets of Paris, the proletariat shouted in their honor, because “it met its leading fighters on the barricades. It considered them to be a proletarian guard”, idem, *Walki klasowe...*, p. 145. The events of four June days tragically showed how wrong the Paris Proletariat was in relation to this guard of the young Proletariat who were bribed by the Provisional Government by 1 franc and 50 centimes a day.

<sup>12</sup> M. Żywczyński, *op. cit.*, p. 375.

bourgeoisie, but also in the whole of France, which greatly feared that the dictatorship of the revolutionary Paris would be repeated”<sup>13</sup>.

Indeed, the memories of the Jacobin Dictatorship during the Reign of Terror were still alive in France<sup>14</sup>. It should be noted, however, that the thesis put forward by S. Salmonowicz – about the supposedly “panicky” fear of the return of the events of 1793-1794 – is not correct, because, as A. Szelaḡowski, among others, emphasizes, “terror was not a new and unknown phenomenon in the history of France”<sup>15</sup>.

What is more – as J.M. Thompson noticed – among the nation of 26 million people, and even in the capital of 700 000 people, there were not many people who felt seriously threatened by the orders of the revolutionary authority; orders which affected not all citizens, but only those considered enemies of the revolution, i.e. spies and those who illegally corresponded with foreign countries and emigrants, aristocrats, royalists, priests who denied an oaths of loyalty to the state and other counter-revolutionaries, speculators, food profiteers, dishonest or venal officials and treacherous or cowardly generals<sup>16</sup>.

In addition, it should be noted – as K. Marx said – that “the defeat of the June insurgents ... proved at the same that Europe is not a matter of “republic or monarchy”. It revealed that a bourgeois republic here means an unlimited, despotic rule of one class over the other”<sup>17</sup>. And indeed he was right, because the events of 1848 would put onto a new track the antagonisms that grew out of the stratification of modern society, shifting, as it were, the political issues into the background.

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<sup>13</sup> S. Salmonowicz, *Rewolucja Francuska: blaski i cienie dziedzictwa*, „Przegląd Historyczny” 1990, no. 1-2, p. 83.

<sup>14</sup> See J. Baszkiewicz, *Z problematyki terroru rewolucyjnego 1789-1795*, In: idem, *Państwo. Rewolucja. Kultura polityczna*, Poznań 2009, pp. 665-681.

<sup>15</sup> See A. Szelaḡowski, *Rewolucja francuska 1789-1793*, Lwów 1934, p. 502.

<sup>16</sup> See J.M. Thompson, *Leaders of the French revolution*, New York 1929, p. 197.

<sup>17</sup> K. Marks, *Osiemnasty brumaire’a Ludwika Napoleona*, In: K. Marks, F. Engels, *Dzieła wybrane*, Volume I, Warszawa 1949, p. 236.

After the June Uprising – according to K. Marx, “the most powerful event in the history of European civil wars”<sup>18</sup> had been suppressed, work on a new constitution was started on 4 September and finished on 23 October, and the constitution itself was passed by the National Constitutional Assembly on 4 November 1848<sup>19</sup>. According to M. Sczaniecki, the new constitution was relatively democratic, partially modelled on the American Constitution, a republican constitution<sup>20</sup>, but one should conclude that this similarity mainly concerned the structure of the office of the president of the republic, on which more later. “It [the constitution – M.K.] was the work of moderate republicans – M. Sczaniecki notes – who formed the majority in the National Constitutional Assembly sought the introduction of a strong republic which would be able to oppose socialism. At the same time, the Constitution of 1848 was a compromise aimed to reconcile different programmes and tendencies, which adversely affected the entire constitutional system”<sup>21</sup>.

The Constitution was to be supplemented by approximately ten organic laws, whose adoption was the top priority of the the National Constitutional Assembly – it decided on 2 September that it would not dissolve itself before enacting them. Incidentally those – so called – organic laws rationed and restricted civic rights and freedoms (the right of assembly, the right to vote, freedom of the press, freedom of teaching), which in fact meant, as Marx pointed out, that the actual “constitution” of France was based not on the document of 4 November 1848, but on organic laws issued on its basis. “They contained principles [passed on 4 November – M.K.] – K. Marx writes – the details were left for the future, and it was in these details that a shameless tyranny was reintroduced!”<sup>22</sup>.

It should be noted, however, that before the National Constituent Assembly started work on a new constitution, its first act was the

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<sup>18</sup> Ibidem, p. 235.

<sup>19</sup> Zob. P. Vigier, *La Seconde République*, Paris 1970, p. 52.

<sup>20</sup> See M. Sczaniecki, *Powszechna historia państwa i prawa*, Warszawa 1994, p. 380.

<sup>21</sup> Ibidem, p. 380.

<sup>22</sup> K. Marks, *Konstytucja Republiki Francuskiej uchwalona 4 listopada 1848 r.*, In: K. Marks, F. Engels, *Dzieła*, Volume VII, Warszawa 1963, p. 595.

establishment of a commission of inquiry to investigate the events of June and of 15 May and to investigate the participation of socialist and democratic leaders in these events, which ended with a trial against the main leaders, which was supposed to eliminate them from public life. In addition to the establishment of a committee of inquiry, during the first few days of its existence, the National Constituent rejected a plan to tax capital – in the form of a mortgage tax, the plan which was the work of the Provisional Government; abolished the law limiting working time to 10 hours a day, restored imprisonment for debts; excluded illiterate persons, who were still a significant part of the French population in the middle of the 19th century, from participation in the courts of assize; introduced the obligation for the press to furnish a money deposit and restricted the right of association<sup>23</sup>.

The Constitution of 1848 was based on the combination of the structure of the legislature during the French Revolution and the structure of the executive in the Constitution of the USA, which was strengthened by direct, rather indirect, election of the President and the lack of the second chamber. Although this system existed for a short time, it was a novelty in the French constitutionalism.

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<sup>23</sup> This statutory obligation to lodge a deposit when registering a press body was a means of repression against the democratic press. The French press law of 9 June 1819 mentioned the deposit for the first time, according to which the amount of the deposit depended on the manner and place of publication of the journal. The highest rate was laid down for publications which appeared more than three times a week and were printed in Paris and in the three neighbouring departments. The Napoleonic Restrictions were restored by virtue of the laws of 11 August 1848 and 27 July 1849. The law of 16 July 1850 extended the high rates to publications published in Lyon and its surrounding Rhône department. The law of 23 July 1850 increased the deposit even further and extended it to all weeklies, magazines and periodicals, introduced the obligation to sign each article with the author's name and restored stamp fees for newspapers, which led almost entirely to the disappearance of the revolutionary press. The law of 30 July 1850 restored censorship of theatre plays, see K. Marks, *Pruski projekt ustawy prasowej*, In: K. Marks, F. Engels, *Dzieła*, Volume V, Warszawa 1962, pp. 283-286; idem, *Trzy nowe projekty ustaw*, In: K. Marks, F. Engels, *Dzieła*, Volume VI, Warszawa 1963, p. 388-393; idem, *Hohenzollernowski projekt ustawy prasowej*, In: K. Marks, F. Engels, *Dzieła*, Volume VI, op. cit., pp. 419-427; idem, *K. Marks, Debata nad ustawą o plakatach*, In: K. Marks, F. Engels, *Dzieła*, Volume VI, op. cit., pp. 501-511; K. Marks, F. Engels, *Przegląd wydarzeń. Maj-październik 1850 r.*, In: idem, *Dzieła*, Volume VII, Warszawa 1963, pp. 528-529.

The Constitution of the Second Republic was preceded by eight articles of the Preamble (thus abandoning the Declaration of Rights). Article IV stated that France's principles were liberty, equality, fraternity and its basis were family, labour, property, and public order.

The Constitution itself – consisting of 116 articles – stated in Article 1 that “The sovereignty exists in the whole body of French citizens. It is inalienable and imprescriptible”. This was a direct reference to Article 11 of the 1791 Constitution which provided that “Sovereignty is one, indivisible, inalienable, and imprescriptible. It belongs to the nation”. The theory that the authority of the nation cannot be relinquished is obviously drawn from J.J. Rousseau<sup>24</sup>. However, as A. Esmein points out, even though the power of its command collapses with the theory of the social contract, the principle itself may be established in a different way<sup>25</sup>.

The author argues that: “A nation, like an individual, cannot legally sell itself or surrender; neither political nor personal freedom, by its nature, can be surrendered. But even if we suppose that sovereignty is not necessarily something inalienable, the act by which a nation would renounce power at a given moment should be considered legally invalid and non-existent. We can only give up what belongs to us. But the sovereignty of a nation is not the property of the present generation, which can legally exercise power, but only exercise it; power belongs to the nation, incarnated in the State, that is to say, in a series of generations following each other; it belongs just as much to the people who will be as to the people who are. It is a sacred deposit, handed down from generation to generation”<sup>26</sup>.

In Article 10, the Constitution abolishes forever all titles of nobility, all distinctions of birth, class or caste<sup>27</sup>, and guaranteed citizens the

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<sup>24</sup> See J.J. Rousseau, *The Social Contract and Discourse on the Origin of Inequality*, ed. L.G. Crocker, New York 1964, Book II, Chapter I and II, pp. 27-30.

<sup>25</sup> See A. Esmein, *Zasady prawa konstytucyjnego*, translated by K. Lutostański, W. Konopczyński, Warszawa 1904, p. 228.

<sup>26</sup> *Ibidem*, p. 228.

<sup>27</sup> Let us recall that in Poland, such provisions were introduced for the first time during the Krakow Uprising in 1846, due to two proclamations of the Dictator of the uprising. The Dictator's appeal to all Poles who knew how to read of February 25, 1846 stated that “the Republic of Poland abolishes all oppression and privileges of nobility – and makes all people equal”, while the Dictator's appeal to the Polish people of February 26,

freedom of labour and (Article 13). According to its provisions, “society favours and encourages the development of labour by free education at the primary level<sup>28</sup>, by professional education, by the equality of rights between the employer and the workman, by institutions for the deposit of savings and those of credit, by agricultural institutions; by voluntary associations, and the establishment by the State (the departments and the communes) of public works for the employment of unoccupied labourers. It also gives aid to deserted children, to the sick, and to the elderly who are without financial means and without relatives to support them” (Art. 13).

“All public powers, whatever they may be” – as we can read in Article 18 (Chapter III – Of Public Power) – emanate from the people and cannot be delegated by hereditary descent and the separation of powers, in the light of Article 19, the first condition of a free government. In fact, the principle of the separation of powers already belonged to those to whom the French Revolution showed the greatest respect – The Declaration of

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1846, supplemented the previous one in the following way: “I proclaim to you that the use of titles: Pan, Wielmożny, Jaśnie Wielmożny, etc. in our Republic of Poland, I find it shameful – I abolish such a thing, and addressing everyone by ty [you], obywatelu [citizen], and preferably bracie [brother] – or when it is an elderly person by wy, I command the customs of the nation’, *Dziennik Rządowy Rzeczypospolitej Polskiej* no. 3, 1846, Kraków, 28 February, In: *W stulecie Wiosny Ludów 1848-1948. Teksty i materiały źródłowe*, ed. N. Gašiorowska, Warszawa 1953, p. 499.

<sup>28</sup> In the field of education, freedom of teaching was declared by Article 9 of the Constitution, which stated that “Freedom of teaching shall be exercised in conditions (...) specified by statutes and under the supervision of the state”. The constitutional provisions were extended by a law passed on March 15, 1850, which subjected the whole system of teaching to the supervision of the clergy, as the Supreme Council for Public Education was established at the head of the ministry of education. (*Conseil Supérieur de l’instruction Publique*), which was headed by four archbishops, see J.F. Chanet, *La loi du 15 mars 1850, „Vingtième Siècle. Revue d’histoire”* 2005, no. 3, pp 21-39, <https://www.cairn.info/revue-vingtieme-siecle-revue-d-histoire-2005-3-page-21.htm> [retrieved: 27 September 2018]. All teachers of provincial schools were subjected to the will of the recteurs, or managers, although the teachers at this level were elected by municipal or parish councils. As K. Marx states, “teachers are in a situation similar to subordination and military discipline, under the authority of recteurs, mayors and parish priests; freedom of education ... it therefore means that no one has the right to teach without the permission of civil and ecclesiastical authorities”, *idem, Konstytucja Republiki Francuskiej...*, p. 587.

the Rights of Man and of the Citizen of 26 August 1789 already recognised it as the basic principle, stating in Article 16 that “any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no constitution”<sup>29</sup>.

The Constitution adopted a one-chamber system by delegating the legislative power to the Assembly (Article 20) elected for the period of three years (Article 31)<sup>30</sup>. As A. Esmein emphasizes, the most important reason for the adoption of the unicameral system was, apart from the public mood, “the need to oppose the president, elected directly by the nation and thus an extremely powerful, with an equally powerful legislature, which could resist him”<sup>31</sup>. In addition, there was a view that “in a country where aristocracy does not exist any more, where the sovereignty of the nation reigns, only one representation of this national authority can exist”<sup>32</sup>.

As I have already mentioned, however, the most characteristic feature of the Basic Law was the replacement of the monarch’s institution with the institution of the President of the Republic, and although when we compare the legal position of the constitutional monarch with that of the President of the Republic, we shall see that, apart from the issue of personal prerogatives, the differences in powers were not significant<sup>33</sup>. However, the very fact that the hated monarch was expelled from the state system, deserved recognition in the opinion of the French people at that time.

In accordance with Articles 43 and 44 of the Constitution of 1848, the executive power was entrusted by the French people to a citizen who received the title of President of the Republic, and the president must have been a native Frenchman aged at least 30 years, who had never lost French nationality. The President was elected for a period of four years and could not be re-elected before the end of a four-year break. The constitutional solutions were modelled, as already mentioned above, on the Constitution of the United States of America, in the light of which the president was

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<sup>29</sup> For more, see W. Brzeziński, *Sądowa kontrola administracji we Francji*, Warszawa 1960, pp. 11-16.

<sup>30</sup> A. de Tocqueville emphasises that “nearly all deputies spoke against two chambers”, *idem*, *op. cit.*, p. 207.

<sup>31</sup> A. Esmein, *op. cit.*, p. 113.

<sup>32</sup> *Ibidem*, p. 114.

<sup>33</sup> See A. Peretiatkowicz, *Państwo współczesne*, Poznań 1948, pp. 43-44.

also elected for a four-year term with the simultaneous election of the vice-president<sup>34</sup>.

Under the U.S. Constitution, only a person who either had been an American citizen since birth or at the time the Constitution was passed could be elected president. In addition such a person had to reach the age of 35 and to have resided in the United States for at least 14 years, The Vice President was the person who, after the election of the President, obtained the highest number of electoral votes (Article II, Section 1)<sup>35</sup>. In France, the National Assembly was to elect the Vice President of the Republic from among the three candidates whom the President had appointed within one month of his election. The Vice President took the same oath as the President; he could not be a relative of the President; and, as in the American Constitution, he was to replace the President when the latter could not hold office.

The President had the right to present draft legislation to the Assembly by ministers, had the armed force at his disposal, but could not command it personally (Article 50). He could not dissolve or suspend the meetings of the Assembly or suspend the functioning of the Constitution. In addition, the President could not initiate any war without the consent of the Assembly, and negotiations which he conducted and treaties which he ratified had to be sanctioned by the Assembly before they came into force. The President had the right of pardon, but could only exercise it after consultation with the Council of State (Art. 55)<sup>36</sup>.

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<sup>34</sup> Text of the constitution: <https://www.archives.gov/founding-docs/constitution-transcript> [retrieved: 26 September 2018]

<sup>35</sup> Cf. The 12<sup>th</sup> Amendment to the American Constitution of 9 December 1803, ratified on 15 June 1804, see more, T. Kuroda, *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic*, Westport 1999, pp. 127-147; N.L. Colvin, E.B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, „University of Miami Law Review” 2010, vol. 66, pp. 475-534; J.D. Hawley, *The Transformative Twelfth Amendment*, „William & Mary Law Review” 2014, vol. 44, pp. 1501-1586, <https://scholarship.law.wm.edu/wmlr/vol55/iss4/5/> [retrieved: 25 September 2018]; S. Levinson, *The Twelfth Amendment*, <https://constitutioncenter.org/interactive-constitution/amendments/amendment-xii> [retrieved: 25 September 2018].

<sup>36</sup> A. de Tocqueville emphasized that although some deputies did everything possible to make the Council of State a third authority, in the end it became “something more

He was also in charge of appointing ambassadors and ministers and the right to suspend for three months the mayors, members of the departmental councils, staff of the National Guard, etc. elected by the citizens.

The acts of the President, except those by which he appointed or dismissed the ministers of the Republic had to be countersigned by a minister (Article 67). Both the President and the Ministers were under the Constitution responsible, each with his own scope, for governmental and administrative acts. If “the actions of the President aimed at dissolving the National Assembly, its postponement or hindering the National Assembly in fulfilling its mandate, they were a crime of main treason. By the very, the President was deprived of his functions; citizens were obliged to refuse to obey him; power passed under the law itself to the National Assembly. The judges of the Supreme Court met immediately ... to judge the President and his henchmen (Article 68).

One should also pay attention to the extremely complex provisions of the Constitution concerning its revision. In accordance with Article 111, each proposal for a revision of the Constitution took on its final character only after three consecutive debates, each of which had to be separated by at least one month and at which resolutions would be adopted by a three-fourths majority of votes, with at least 500 members present. In addition, in order to revise the constitution a special assembly, known as the revision assembly, was to be convened for a period of three months; its exclusive competence was precisely the revision of the constitution. According to Marx, this type of provision adopted in the Constitution by the Republicans was “only a powerless attempt to retain power, even if they become a parliamentary minority, in whose role they had already seen themselves prophetically, that power which, even now that they were still in possession of the parliamentary majority and all the means of governmental power, was increasingly slipping out of their weak hands”<sup>37</sup>.

K. Marx, summed up the entire legislative work of the Constitutions in extremely harsh words: “What that constitution changed and was supposed to change in bourgeois society was as much as he rechristening of

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than a purely administrative body, but also something infinitely smaller than a legislative assembly”, *idem*, *op. cit.*, p. 213.

<sup>37</sup> K. Marks, *Osiemnasty brumaire’a...*, pp. 242-243.

the Christian calendar as a republican one<sup>38</sup>, of the saintly Bartholomew as the saintly Robespierre, made no more change in the wind and weather than this constitution made or was supposed to make in bourgeois society. Where it went beyond a *change of costume*, it put on record the *existing* facts. Thus it solemnly registered the fact of the republic, the fact of universal suffrage, the fact of a single sovereign National Assembly in place of two limited constitutional chambers. Thus it registered and regulated the fact of the dictatorship of Cavaignac by replacing the stationary, irresponsible hereditary monarchy with an ambulatory, responsible, elective monarchy, with a quadrennial presidency. Thus it elevated no less to an organic law the fact of the extraordinary powers with which the National Assembly, after the horrors of May 15 and June 25, had prudently invested its president in the interest of its own security... The royalist labels were torn off the mechanism of the old monarchy and republican labels stuck on<sup>39</sup>.

The most important event connected with the implementation of the new constitution became the election of the first President of the Republic in the history of France, which took place on December 10, 1848. The little-known Prince Louis-Napoleon Bonaparte received 5 million 434 thousand and 226 votes<sup>40</sup>, who owes this excellent result of voting primarily to the support of the peasant masses to such an extent that Marx described the election day of 10 December as “the day of a peasant uprising”<sup>41</sup>, and even a “peasant coup”<sup>42</sup>.

“Napoleon, stresses Marx, was the only man who fully expressed the interests and imagination of the peasant class, newly created in 1789. By writing his name on the façade of the republic, the peasantry thus proclaimed the war to foreigners and the struggle for their class interests within the country. Napoleon was not a person for the peasants, but a program. With banners and music, the peasants went to polling

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<sup>38</sup> For more about the republican calendar, see S. Meller, *Czas utopii wymierzonej*, In: J. Baszkiewicz, S. Meller, *Rewolucja francuska 1789-194. Społeczeństwo obywatelskie*, Wrocław 1983, pp. 463-469.

<sup>39</sup> K. Marks, *Walki klasowe...*, p. 159.

<sup>40</sup> See J.M. Thompson, *Louis Napoleon and The Second Empire*, New York 1995, p. 96.

<sup>41</sup> K. Marks, *Walki klasowe...*, p. 161.

<sup>42</sup> *Ibidem*, s. 162.

stations calling out: “*Plus d’impôts, à bas les riches, à bas la république, vive l’Empereur!* – Down with taxes, down with the rich, down with the republic, long live the Emperor live!” Behind the emperor there was a peasant war. The republic, which the peasants crushed by their vote, was a republic of the rich<sup>43</sup>.

The republic of the rich is not just a cliché because the French peasants associated a republic with a tax collector<sup>44</sup>, and associated Louis-Bonaparte with their hope for the abolition of burdensome taxes. Unfortunately, disappointment came very quickly, as on 27 December the government proposed to maintain the salt tax, which had already been demanded by the Provisional Government to be abolished completely. However, the Constituent Assembly, in an attempt to overthrow the government and Napoleon, “greedily seized the double opportunity to overthrow the cabinet and speak out against the man chosen by the peasants as a representative of peasants’ interests”<sup>45</sup> and rejected the Finance Minister’s proposal, reducing the salt tax to one third of its original amount, which put the president, who was behind the government – the president elected by the peasants against the Constituent Assembly- in an awkward situation. A bizarre event took place: in the conflict between the Constituent Assembly and the President, the Assembly took the side of the peasantry, which in turn elected Louis Napoleon as President, solely in order to oppose the Constituent Assembly. The power confrontation to which both sides – the Constituent assembly (until the uprising) and the President with the ministers (until the coup) – would take place only after some time<sup>46</sup>.

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<sup>43</sup> Ibidem, p. 162. As M. Czernyszewski emphasises, “the charm that Napoleon’s name had for the dark mass of the rural population, an almost legendary charm that can only be compared in history to the legendary fame of Charlemagne”, led to a situation in which “peasants literally sailed along the agitated and excited brook, to vote for the Emperor’s nephew in a grey frock coat, whose portrait, like the image of a household deity, was hanging next to a chimney, in every cottage, whose fame and size were the main and favourite topic of conversations during the long winter evenings in almost every family circle”, idem, *Francja za panowania Ludwika Napoleona*, In: idem, *Wybór pism...*, p. 241.

<sup>44</sup> Ibidem, p. 241.

<sup>45</sup> K. Marks, *Walki klasowe...*, p. 166.

<sup>46</sup> The coup carried out by Louis-Bonaparte on 2 December 1851 roku.

As we know, the President of the Second Republic, whom the Constitution did not allow to stand for office again, violated Article 68 of the Constitution of 1848 by carrying out a coup d'état on 2 December 1851, which had already been prepared for more than a year<sup>47</sup>, by means of heavy barricade fighting<sup>48</sup> and drafted a new Constitution of January 14, 1852, which was the fruit of this coup<sup>49</sup>. This constitution was directed against representative governments in general and against cabinet governments in particular. Thus France began a new period in its history, entering the path of caesarism, the cause of which A. Esmein saw in the fact that "after years of turbulent freedom in the revolutionary era, after the harsh rule of the first empire, France, together with parliamentary governments in the

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<sup>47</sup> This date was not accidental. Louis-Napoleon chose it for two reasons. Firstly, on that day in 1804 the ceremony of anointing and crowning of Napoleon took place, which was the completion of the announcement by the Senate of 18 April 1804 The First Consul as the hereditary emperor of France. Secondly, on December 2, 1805 Emperor Napoleon I fought the victorious Battle of Austerlitz, considered to be one of the most important Napoleonic wars see E. Tarle, *Napoleon*, translated by H. Winawerowa, Warszawa 1946, pp. 108-111, 127-129; J.M. Thompson, *Louis Napoleon...*, s. 116. K. Marx pointed out that by simply drafting the November Constitution, the President could only remove the National Assembly by unconstitutional means, i.e. by abolishing the Constitution itself, see idem, *Osiemnasty brumaire'a...*, p. 241.

<sup>48</sup> The course of the fights is described in detail by G. Ziegler, op. cit., pp. 95-107. There were many repressions after they finished. As J.M. Thompson writes, Louis-Napoleon „allowed the arrest of some 27,000 ‘republicans and socialists’ all over the country, and to set up (in addition to the courts-martial which condemned so many Parisians to death) departmental committees of three with power to determine, in absentia, without witnesses or appeal, the fate of thousands who might have nothing against them but a local reputation for ‘dangerous’ opinions. In this arbitrary way, of the 26,884 prisoners (these are the official figures) more than 9500 were transported to Algeria, and 239 of the ‘worst cases’ to Cayenne; 3000 were ‘interned’ away from their homes, and more than 1500 expelled from the country. Too late to remedy the scandal, Louis had the sentences revised, and pardoned 3000-4000 victims of this national ‘purge’. For they were of all classes: 5423 cultivateurs, 1850 journaliers, 1570 rentiers, 1107 cordonniers, 888 menuisiers, 733 magons, 642 tisserands, 457 forgerons, 415 boulangers, 327 medecins, 251 tailleurs de pierres, etc.”, idem, *Louis Napoleon...*, pp. 122-123.

<sup>49</sup> So far, the most interesting analysis of the causes, course and consequences of this coup d'état has been carried out by K. Marx, see idem, *Osiemnasty brumaire'a...*, pp. 224-318. The text of the Constitution: <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1852-second-empire> [retrieved: 27 September 2018].

era of restoration, the monarchy of July and the Second Republic, became familiar with and tasted political freedom, normalized and peaceful, as a result of which parliamentary governments and political freedom were in a necessary relationship in the consciousness of the society, the former seemed the natural form of the latter. In 1851, the majority of the French nation, intoxicated by the memories of the empire's fame or frightened by the development of socialist doctrines, became indifferent to the slogans of political freedom and in the plebiscites of 1851 and 1852 agreed to sacrifice it"<sup>50</sup>.

### III

In conclusion, let us note that although the revolution of 1848 did not overthrow the monarchy in all countries, it discredited it, because many kings and rulers had to capitulate before the people, so that their moral authority "extinguished"<sup>51</sup>. J. Baszkiewicz stated that the revolution of 1848 "was in turn a triumph and a lesson for conservative and authoritarian governments: it provoked reflection on its national, social and political demands"<sup>52</sup>. The lasting effect of the revolution was also the fact that millions of people across Europe went to the ballot box for the first time on such a scale throughout Europe and, moreover, nowhere where the property census had been abolished, was it brought back. "The idea of democracy – as S. Kieniewicz notes – took a great step forward in the minds of the masses, and even of the ruling spheres, also in places where it was reflected in the statutes"<sup>53</sup>.

It should be remembered that it is in the constitutionalism of the Spring of Nations that we find the full concept of the rule of law, i.e. the idea of the rule of law based on the principles of: the primacy of the constitution and statutes, binding the state apparatus with statutes passed by

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<sup>50</sup> A. Esmein, *op.cit.*, pp. 185-186.

<sup>51</sup> See S. Kieniewicz, *Oblicze ideowe Wiosny Ludów*, Warszawa 1948, p. 126.

<sup>52</sup> J. Baszkiewicz, 1848: rewolucja niedoceniana, In: *idem*, *Państwo. Rewolucja. Kultura polityczna*, Poznań 2009, p. 798.

<sup>53</sup> S. Kieniewicz, *op. cit.*, p. 126.

a parliament, abstract judicial and constitutional protection of the legality of statutes, national sovereignty, division of powers, independence of the judiciary, independence of judges, catalogue of civil rights and freedoms, judicial and constitutional protection of fundamental rights of citizens, civil law liability of the state for unlawful actions of its officers, secular nature of the state, self-governing structures of the state and local government structures of a state<sup>54</sup>.

In view of the above, the introduction of a republican government in France in 1848 and the adoption of innovative political solutions in the constitution, was enshrined in golden letters in the history of modern democracy and constitutionalism<sup>55</sup>, contributing significantly to the construction of a common pan-European edifice based on the foundations of the rule of law.

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<sup>54</sup> See A. Dziadzio, *Koncepcja państwa prawa w XIX wieku – idea i rzeczywistość*, „Czasopismo Prawno-Historyczne” 2005, no.1, p. 186.

<sup>55</sup> A. Esmein pointed out that the Revolution of 1848 itself gave French constitutional law a new direction, see *idem*, *op. cit.*, p. 59.

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